Supreme Court, U.S.
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No. _____

In The

Supreme Court of the United States

STEPHEN TANCREDI and RONALD SPEIDEL,

Petitioners,

v.

METROPOLITAN LIFE INSURANCE CO.,
and
METLIFE, INC.,

Respondents.

On Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Second Circuit

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. In connection with the conversion of Metropolitan Life Insurance Company from a mutual to a stock company, could the Second Circuit disregard as outdated *Phillips Petroleum Company v. Jenkins*, 297 U.S. 629, 634-35 (1936), which set forth the rule that the Takings Clause and Contract Clause prohibit the use of a state's reserved power "to take property without just compensation . . . or to destroy or impair any vested property right?" The Second Circuit construed *American Mfrs. Mutual Ins. Co. v. Sullivan*, 526 U.S. 40 (1999) and other recent cases as *sub silentio* overruling the more specific "reserve power" law stated in *Phillips Petroleum*.

2. Does the "per se" Takings Clause analysis of *Brown v. Legal Foundation of Washington,* 123 S.Ct. 1406 (2003), apply when, as here, a private actor (a mutual insurer) exercises a state's reserved powers to force the owners of property (the mutual policyholders) to relinquish their property rights in a forced sale under a state conversion law, where the mutual insurer otherwise lacked the contractual right to take the mutual policyholders' property?

PARTIES

Petitioners, Stephen Tancredi and Ronald Speidel, were participating policyholders of Metropolitan Mutual Life Insurance Co.

Respondents are Metropolitan Life Insurance Co., MetLife, Inc., its holding company, and the surviving corporate entities after MetLife's demutualization.

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OPINIONS BELOW

The opinion of the United States Court of Appeals for the Second Circuit (App. 1-10) is reported at *Tancredi v. Metropolitan Life Ins. Co.*, 316 F.3d 308 (2nd Cir. 2003). The opinion of the district court (App. 14-31) is reported at 149 F. Supp.2d 80 (S.D. N.Y. 2001).

JURISDICTION

The court of appeals' judgment was entered on January 21, 2003. App. 10. Its mandate was issued on February 21, 2003. App. 11-12. This Court's jurisdiction is invoked under 28 U.S.C. § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

1. The Takings Clause of the Fifth Amendment, U.S. Const. amend. V provides: "nor shall private property be taken for public use, without just compensation."

2. The Contract Clause of Article 1 of the Constitution, U.S. Const. art. 1, § 10 provides: "No state shall . . . pass any Bill of Attainder, ex post facto Law, or Law impairing the Obligation of Contracts . . . "

3. 42 U.S.C. § 1983 provides: "Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States . . . to the deprivation of any rights, privileges or immunities secured by the Constitution and

laws, shall be liable to the party injured in an action at law . . . "

4. N.Y. Const. art. 10, § 1 provides: "Corporations may be formed under general laws . . . All general laws and special acts passed pursuant to this section may be altered from time to time or repealed." Appendix D at App. 32.

5. N.Y. Ins. Law § 7312: Reorganization of a domestic mutual life insurer into a domestic stock life insurer. Appendix E at App. 33-66.

STATEMENT OF THE CASE

On January 6, 1915, the State of New York (the "State") granted a charter authorizing Metropolitan Life Insurance Company ("MetLife") to operate as a "mutual life insurance company."[1] MetLife issued and delivered "participating" contracts of insurance ("contracts") to Petitioners and others, premised upon the expectation that MetLife would operate as a mutual life insurance company for the benefit of these "Members." App. 173.

Five decades later, in 1988, the State pursuant to its reserved power, N.Y. Const. art. 10, § 1, enacted a law authorizing domestic mutual life insurance companies to convert to stock life companies. N.Y. Ins. Law § 7312 *et*

[1] "MetLife" refers to the pre-conversion entity, a mutual company, and the post-conversion entities Metropolitan Life Insurance Company, a New York stock company, and Met.Inc., a Delaware company, unless stated otherwise.

seq. ("Conversion Law"). Appendix E at App. 33. On September 28, 1999, MetLife's Board adopted a Plan of Reorganization (the "Plan") and sought approval pursuant to the Conversion Law. Appendix E at App. 33-66. The Plan proposed to convert MetLife from a mutual into a subsidiary stock life insurance company with a parent holding company ("Met.Inc."). App. 84-153. The Plan proposed to pay cash, policy credits or common stock in Met.Inc. to Members in exchange for their membership interests. App. 84-85. A public hearing and vote were held. Only 2.7 million of over 11 million Members voted (less than 25%) with a majority of voters voting in favor. App. 80. On April 4, 2000, the Superintendent of Insurance approved the Plan. App. 169. The Plan was immediately implemented when Met.Inc. conducted an IPO.

On September 15, 2000, Petitioners filed an Amended Complaint in the United States District Court for the Southern District of New York, seeking damages by reason of the statutory conversion. The Complaint alleges that because MetLife obtained and utilized State authorization to unilaterally take Petitioners' contracts, MetLife's conduct constituted "state action" that deprived Petitioners of rights secured by the Takings Clause (Counts I-III), the Commerce Clause (Count VI) and the Contracts Clause (Counts V-VIII) of the Constitution. App. 170-217.

The District Court granted MetLife's Motion To Dismiss pursuant to Fed.R.Civ.P. 12(b)(6). *Tancredi v. Metropolitan Life Ins. Co.*, 149 F. Supp.2d 80 (S.D. N.Y. 2001), holding that the Complaint failed to allege "state action," as required by 42 U.S.C. § 1983. *Id.* at 84-85. The Second Circuit, relying on *American Mfrs. Mutual Ins. Co. v. Sullivan*, 526 U.S. 40 (1999), *affirmed*, 316 F.3d at 312. App. 7-8. The Second Circuit also rejected Petitioners'

contention that the Complaint alleged a viable Takings Clause violation. *See Yee v. City of Escondido*, 503 U.S. 519 (1992). App. 10.

REASONS FOR GRANTING THE PETITION

Certiorari should be granted to resolve a conflict of authority among federal courts of appeal with decisions of this Court which affect the property rights of tens of millions of mutual life insurance policyholders. This Court has long held that the protections of the Takings and Contracts Clauses prevent a corporation from using state "reserved power" to take, without just compensation, the contracts made by the corporation with other private parties in order to alter or amend the form and powers of the corporation. *Phillips Petroleum Co. v. Jenkins,* 297 U.S. 629 (1936) and *Coombes v. Getz,* 285 U.S. 434 (1932). The Sixth Circuit applied this constitutional limitation in *Ohio State Life Insurance Co. v. Clark,* 274 F.2d 771 (6th Cir. 1960).

However, the Second Circuit here, and the Seventh Circuit in *Gayman v. Principal Financial Services, Inc.*, 311 F.3d 851 (7th Cir. 2002), hold that these constitutional limitations no longer apply.[2] The Second and Seventh Circuits construe *American Mfrs. Mutual Ins. Co. v. Sullivan*, 526 U.S. 40 (1999), and other more recent "state action" cases to have, *sub silentio*, over-ruled the more specific "reserve power" law recognized in *Phillips Petroleum*

[2] A Petition for Writ of Certiorari is being contemporaneously filed in *Gayman v. Principal Financial Services, Inc.*, at No. 02A709.

and *Coombes*. These precedents have not been overruled by this court and, therefore continue to provide the applicable rules of decision. Only this Court may overrule its precedents. *Thurston Motor Lines, Inc. v. Jordan K. Rand, Ltd.*, 460 U.S. 533 (1983).

In addition, a mutual insurer who utilizes state reserved power in a statutory conversion to forcibly take property (here the mutual life insurance contracts), in order to effectuate the conversion, engages in a "per se" taking within the meaning of *Brown v. Legal Foundation of Washington,* 123 S.Ct. 1406 (2003). The Second Circuit's refusal to apply this Court's "per se" takings analysis conflicts with *Brown*.

The constitutional questions presented affect the property of tens of millions of policyholders of MetLife and other companies. The growth of mutual life insurance has been exponential since the first mutual company was formed in 1843. Hansman, *The Organization of Insurance Companies, Journal of Law, Economics and Organization*, Vol.1, No. 1, p. 134 (Fall 1985). Until recently, the mutual was a predominant form of corporate organization in the life insurance industry. By the end of 1999, thirty-six percent of all life insurance policies nationwide, were held in mutual insurance companies and owned by the policyholders. *See* Smallenberger, *Restructuring Mutual Life Insurance Companies: A Practical Guide Through the Process*, 49 Drake L. Rev. 513, 517 (2001).

The mutual form of corporate organization, however, is in the process of being dismantled through statutory conversions. Within the last 20 years, many states, including New York, have enacted new laws authorizing procedures by which mutual life insurance companies may convert to

stock life companies. *See*, Racz, *No Longer Your Piece of the Rock: The Silent Reorganization of Mutual Life Insurance Companies*, 73 N.Y.U. L. Rev. 999, 1102-1103 (June 1998). Forty-five states presently have some form of mutual statutory conversion law. Smallenberger, *supra*, at 526-527. Numerous mutual insurers have already demutualized, and most, if not all, of the others are expected to follow suit using these statutes. *Id.* at 517.

I. The Second Circuit's Decision Is In Direct Conflict With *Phillips Petroleum*

A. *Phillips Petroleum* Requires Application Of The Takings And Contracts Clauses To A Corporate Reorganization Under A State's Reserved Power

This Court in *Phillips Petroleum,* 297 U.S. at 634-35, restated longstanding precedent that the use of state authority enabling a change in corporate form under a state's reserved power is limited by the Takings Clause and Contracts Clause of the United States Constitution:

> The reserved power is not unlimited and cannot be exerted to defeat the purpose for which the corporate powers were granted, *or to take property without just compensation . . . or to destroy or impair any vested property right.*

(emphasis added). *See also Id.* at 635 n.5 (listing cases applying this rule), and *Coombes v. Getz*, 285 U.S. 434, 441-42 (1932) ("The authority of a state under the so-called reserved power is wide; but is not unlimited . . . the interrelations of state, corporation, and stockholders may be changed; but neither vested property rights nor the obligation of contracts of third persons may be destroyed

or impaired."). (citations omitted). This rule derives from *Dartmouth College v. Woodward*, 4 Wheat. 518, 4 L.Ed. 629 (1819), which held that a state's charter creates a public contract protected by the Contracts Clause. As a result of *Dartmouth College,* many states enacted a law, as did New York, reserving the power to alter, amend or repeal corporate charters. *Looker v. Maynard*, 179 U.S. 46, 51 (1900). By enactment of this "reserved power," the state "contractually" reserved the right to subsequently amend a charter since the "reserved power" would then be implied by law in all charters.

This Court, however, also recognized that the reserved power to alter or amend charters is not absolute, and is limited only to the extent it "will not defeat or substantially impair the object of the grant, or any right vested under the grant . . . " *Phillips Petroleum,* 297 U.S. 629, 635; *Looker*, 179 U.S. at 52. *Wright v. Minnesota Mutual Life Ins. Co.*, 193 U.S. 657, 663-64 (1904) (where the legislature does not change the essential character of the charter, alteration is proper); *Polk v. Mutual Reserve Fund*, 207 U.S. 310, 325-26 (1907) (same). Thus, the Takings Clause and Contracts Clause apply to the exercise of reserved power when a change in corporate form would destroy contracts made by the corporation. Even then, the state power of eminent domain must be used to accomplish the change, provided, of course, that just compensation is paid. *See West River Bridge Co. v. Dix*, 47 U.S. 507, 531 (1848) ("No state, it is declared, shall pass any law impairing the obligation of contracts; yet, . . . in every political sovereign community there inheres necessarily the right and the duty of . . . protecting and promoting the interests and welfare of the community at large. . . . This power . . .

denominated the *eminent domain* of the State, is paramount to all private rights vested . . . ") (emphasis in original).[3]

The Sixth Circuit in *Ohio State Life Ins. Co. v. Clark,* 274 F.2d 771 (6th Cir. 1960) correctly applied the case law of this court. In *Ohio State Life,* an attempt was made to alter the charter of an insurance company in a way which would have destroyed the rights of certain "mutual plan policyholders" to the surplus. *Id.* at 775. Relying on *Coombes v. Getz,* 285 U.S. at 441-42, the Sixth Circuit held that the reserved power to amend the charter was not so broad as to allow the company to destroy the vested rights of its mutual policyholders: "In our opinion, the proposed amendment by the stockholders, acting under the power of corporate amendment conferred by the legislature, would be an impairment of the contract obligations of the corporation running to appellees." *Id.* at 779.[4]

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[3] New York itself recognizes these constitutional limits on its reserve power. *See Lord v. Equitable,* 194 N.Y. 212, 87 N.E. 443, 448 (1909) ("When the Legislature has created a corporation and has given it power to acquire property, it cannot take away the property so acquired without providing for compensation . . . No reservation, for instance, could authorize a law giving to policyholders the capital stock belonging to the stockholders."). V. Morawetz, *Private Corporations* 1050 (1886), as quoted in Taylor, *Evolution Of Corporate Combination Law: Policy Issues And Constitutional Questions,* 76 N.C. L. Rev. 687, 1014 (1998) ("The property and privileges belonging to individual members of a corporation are subject to *the power of eminent domain* . . . and in the exercise of this power *a state* may enable any portion of the shareholders in a corporation to dissolve their association . . . *upon making just compensation to such shareholders as are not willing to accept the change* . . . ").

[4] State courts apply this rule in mutual to stock conversions. *Huber v. Martin,* 127 Wis. 412, 105 N.W. 1031, 1037-1039 (1906); *Carlton v. Southern Mut. Ins. Co.,* 72 Ga. 371 (1884).

Phillips Petroleum and *Coombes* are the law today since they have never been overruled by this Court.

B. The Decision Of The Second Circuit Erroneously Eliminates The Takings And Contracts Clauses Restrictions On The Exercise Of State Reserved Power

The use of a statutory conversion by MetLife to effect the conversion of a state charter from a mutual to a stock company constitutes the exercise of reserved power and, therefore, "state action," since the exercise of this state power was used, as alleged, to destroy vested mutual life insurance contracts. "State action" constitutes conduct "fairly attributable" to the state. *Lugar v. Edmondson*, 457 U.S. 922, 937 (1982). A "state actor" is one who *exercises a right or privilege created by the state* or engages in conduct imposed by the state or by a person for whom the state is responsible. *Id.* In a statutory conversion, such as here, the mutual insurer's use of reserved power embedded in statutory law is the exercise of a right or privilege created by the state.

A mutual insurer's conduct is "fairly attributable" to the state where the mutual insurer, with state authorization, exercises a right under the state's reserve power, as in *Phillips Petroleum*, to "defeat or substantially impair the object of the grant, or any right vested under the grant . . . " 297 U.S. 629, 635. Here, if a mutual insurer exercises reserved power to destroy vested contractual rights of policyholders to the surplus, then the mutual insurer is exercising state action. Exercise of reserve power can occur by amending the law under which a charter was taken, or by the creation of authority for the corporation to make the change itself. *Lord v. Equitable*, 194 N.Y. 212,

227, 87 N.E. 443, 448 (1909). Here, the State of New York amended its insurance law in 1988 to provide the procedures by which a mutual insurer could exercise reserved power of the State to change its corporate form and powers. Under the Conversion Law, a mutual insurer utilizes New York's "reserved power" by creating and formulating a plan of conversion pursuant to the statutory procedure, subject to approval of the Superintendent of Insurance. Appendix E at App. 33-36.

The Second Circuit, by focusing only on the necessity of state approval under the Conversion Law, concluded that the Takings Clause no longer applies to a state's exercise of reserve power. The Second Circuit recognized that Petitioners asserted that the conversion of MetLife pursuant to the Conversion Law violated their rights under the Takings and Contracts Clauses. *Tancredi*, 316 F.3d at 311-12. To determine whether these constitutional provisions applied, the Second Circuit only examined this Court's decisions in a recent line of "state action" cases including *American Mfrs. Mutual Ins. Co.*, all of which construed the element of "state action" under 42 U.S.C. § 1983. *See also Jackson v. Metropolitan Edison Co.*, 419 U.S. 345, 352-353 (1974); *Flagg Bros. Inc. v. Brooks*, 436 U.S. 149, 164 (1978); and *Blum v. Yaretsky*, 457 U.S. 991 (1982). From these cases, the Second Circuit concluded that, "a regulatory agency's performance of routine oversight functions to ensure that a company's conduct complies with state law does not so entwine the agency in corporate management so as to constitute state action." *Tancredi*, 316 F.3d at 313 (citation omitted). The Second Circuit also specifically relied on the Seventh Circuit decision in *Gayman v. Principal*, 311 F.3d 851, which had undertaken the same analyses.

The cases applied by the Second Circuit, however, neither involved nor addressed a state's exercise of "reserved power." Instead, *American Mfrs.* only involved the right of insurance companies to suspend benefits under a state's workers' compensation law. *Id.*, 526 U.S. at 45. *Jackson* only involved the right of a private electric company to terminate its customer's electrical service pursuant to a general tariff filed with the state public utility commission. *Id.*, 419 U.S. at 346. *Flagg Bros.* only involved the right of a warehouseman to sell goods entrusted to him for storage under the New York Uniform Commercial Code. *Id.*, 436 U.S. at 151. *Blum* only involved the right of a nursing home to discharge or transfer patients pursuant to certain federal regulations. *Id.*, 457 U.S. 991. Clearly, these cases did not address, let alone overrule, the precedent underlying *Phillips Petroleum.*

A second element of state action examines whether a particular person or entity has conducted itself as a "state actor." *Lugar*, 457 U.S. at 937. This requires a careful examination of the "specific conduct" alleged by the plaintiff. *Id.* The Second Circuit also erred by not focusing on the specific conduct about which the Petitioners had complained. In the statutory conversion here, the specific conduct alleged is that *the mutual insurer's use of reserved power under a statutory conversion procedure constitutes a taking of property without just compensation.* Given this alleged conduct, a court must examine whether the three elements of a Takings violation exist including that (1) a "property interest" exists; (2) a "taking" of that property occurred, and (3) there was a failure to pay "just compensation" upon the taking. *See Phillips v. Washington Legal Foundation*, 524 U.S. 156, 164 (1998). If these elements exist, *a fortiori,* "state-action" under either the Fourteenth

Amendment or § 1983 must exist because conduct which satisfies the state-action requirement of the Fourteenth Amendment constitutes action "under color of state law" under § 1983. *Brentwood Acad. v. Tennessee Secondary School Athletic Assoc.*, 531 U.S. 288, 295 n.2 (2001).

This Court's recent "state action" cases relied upon by the Second and Seventh Circuits have not replaced *Phillips Petroleum*. As this Court observed in *Jackson*, 419 U.S. at 352-53, "If we were dealing with the exercise by Metropolitan of some power delegated to it by the State which is traditionally associated with sovereignty, such as eminent domain, our case would be quite a different one." The exercise of reserved power delegated by a conversion law likewise implicates the power to take property and, therefore gives rise to state action.[5]

II. The Decision Of The Second Circuit Is In Direct Conflict With This Court's Decision In *Brown v. Legal Foundation of Washington*, 123 S.Ct. 1406 (2003)

The Second Circuit's ruling that "The change in MetLife's corporate form, converting it from a mutual to a stock insurance company, is not akin to the physical invasion or occupation of property" (316 F.2d at 314) is in direct conflict with *Brown v. Legal Foundation of Washington*, 123

[5] In recognition of these constitutional restrictions, appraisal statutes were enacted to provide a method of providing full compensation to contract holders injured by a corporate charter amendment. *See, e.g.*, Calio, *New Appraisals Of Old Problems: Reflections On The Delaware Appraisal Proceeding*, 32 Am. Bus. L.J. 1, 8-13 (1994) (tracing origins of appraisal rights).

S.Ct. 1406 (2003). In *Loretto v. Teleprompter Manhattan CATV Corp.*, 458 U.S. 419 (1982), and *Yee v. City of Escondido*, 503 U.S. 519, 527 (1992), this Court explicitly recognized that government authorization that allows the taking of one's property by another constitutes conduct protected by the Takings Clause. A "physical" taking occurs where the government authorizes a physical occupation or taking of property by a third person or itself. *See Yee* at *Id.*, *Loretto*, 458 U.S. at 426. Recently, in *Brown,* this Court held that the use of government authority to transfer a contractual right constitutes a type of "per se" taking:

> We agree that a *per se* approach is more consistent with the reasoning in our *Phillips* opinion than *Penn Central's* ad hoc analysis. As was made clear in *Phillips,* the interest earned in the IOLTA accounts "is the 'private property' of the owner of the principal." 524 U.S. at 172, 118 S.Ct. 1925. If this is so, the transfer of the interest to the Foundation here seems more akin to the occupation of a small amount of rooftop space in *Loretto.*

Brown, 123 S.Ct. at 1419.

The Second Circuit erred by not applying the mandated three-part Takings analysis required by *Phillips v. Washington Legal Foundation*, 524 U.S. 164 (1998). The three elements of a Takings claim (a property interest, a taking, and the failure to pay just compensation), exist with respect to a statutory conversion where, as here, it is alleged that the mutual policyholders' contractual rights are not fully compensated in the course of the conversion proceedings. In "per se" takings cases, a "clear rule" of just compensation applies. *See Yee*, 503 U.S. at 522-23. Here,

as more fully discussed below, a property interest does exist. Second, a "per se taking" occurs in a statutory conversion because the components of the mutual insurance contracts are abrogated by government power, not private consent. A "per se" taking results when the powers to possess, use and control property are destroyed. *Loretto*, 458 U.S. at 434-35; *Yee*, 503 U.S. at 527; *Ruckelshaus v. Monsanto Co.*, 467 U.S. 986, 1003 (1984); *Phillips*, 524 U.S. at 166 n.5.

A "per se" taking similar to that identified in *Phillips* occurred here because, by the Superintendent of Insurance's authorization, Met.Inc. took Petitioners' equity interests and assigned Petitioners' right to insurance benefits to a "closed block." N.Y. Ins. Law § 7312 (5)(A). The value to be paid in exchange for these contractual rights was not determined privately, by arms length bargaining, but by the Superintendent as being "fair and equitable." The right of ownership and control of the surplus was divested and was given to the public investors by the Superintendent's order. In sum, the conversion eliminated Petitioners' "possession, use and control" of property by determination of the Superintendent rather than by contract or private bargaining.

This abrogation of contractual rights involved state compulsion or "required acquiescence" which "is at the heart of the concept of occupation." *Yee*, 503 U.S. at 527 (quoting *FCC v. Florida Power Co.*, 480 U.S. 245, 252 (1987)). The absence of consent is a key element as this Court explained, "The line which separates these cases from *Loretto* is the unambiguous distinction between a commercial lease and an interloper with a government license." *Florida Power*, 480 U.S. at 252-53. Here, MetLife was acting with a state license rather than with contractual

consent. A "statutory conversion" is accomplished without the members' established contractual consent. MetLife did not use the contracted-for method of modification, but instead used the state's authority under the Conversion Law. Nor did the vote of members provide the consent for the loss of individual contractual rights. A vote of some or a majority cannot destroy rights given by contracts of the corporation. RUSS & SEGALLA, 3 COUCH ON INS. § 39:24 (3d Ed. 1995-1996). In a mutual company, a vote of the membership cannot take away individual contractual interests. *Parish v. New York Produce Exch.*, 169 N.Y. 34, 49, 61 N.E. 977, 981 (1901).

Finally, a Takings claim arises by the failure to provide full or equivalent compensation. "When the government physically takes possession of an interest in property for some public purpose, it has a categorical duty to compensate the former owner." *Brown v. Legal Foundation of Washington,* 123 S.Ct. 1406, 1418 (2003). " '[J]ust compensation' means the full monetary equivalent of the property taken. The owner is to be put in the same position monetarily as he would have occupied if his property had not been taken." *Id.* at 1419. *See also United States v. Virginia Elec. & Power Co.*, 365 U.S. 624 (1961).[6] A statutory conversion, as alleged here, may deprive full and

[6] The Takings Clause mandates that a statutory procedure to adjudicate just compensation be provided where a taking is itself authorized. In the absence of a statutory procedure, a direct action exists under the Takings Clause. *First English Evangelical Church of Glendale v. County of Los Angeles, California*, 482 U.S. 304, 314-15 (1987) (citing *Jacobs v. United States*, 290 U.S. 13, 27 (1933)) (The Takings Clause "secures *compensation* in the otherwise proper interference amounting to a taking.").

equivalent compensation. Clinton, *The Rights Of Policyholders In An Insurance Demutualization,* 41 Drake L. R. 657, 689 (1992) ("These provisions prevent policyholders from receiving the market value of their ownership interest").

III. The Constitutional Questions Presented Affect The Valuable Property Rights Of Millions Of Mutual Policyholders Whose Contractual Rights May Be Taken By A Statutory Conversion

The widespread use of statutory conversions affect significant and valuable property rights. A mutual life insurance contract evidences property because it is a formal understanding supporting a claim of entitlement. *Bishop v. Wood*, 426 U.S. 341 (1976); *United States Trust Co. of New York v. New Jersey*, 431 U.S. 1, 19 n.16 (1977) ("Contract rights are a form of property and as such may be taken for a public purpose"); *United States v. General Motors Corp.*, 323 U.S. 373, 378 (1945). The contracts here conferred proportionate ownership of a common fund and its earnings (the mutual surplus), which evidences property. *Phillips v. Washington Legal Foundation*, 524 U.S. 156, 166 n.5 (1998) ("The earnings of a fund are incidents of ownership of the fund itself and are property just as the fund itself is property").

The Treasury Department specially recognizes policyholders' contractual and ownership rights in the tax treatment of mutual insurers. Department Of The Treasury, *Report To The Congress On Property And Casualty Insurance Company Taxation* (Apr. 1991); *Department Of Treasury, Final Report To The Congress On Life Insurance Company Taxation* at 23 (Aug. 1989) ("A 'participating' policy is one through which a policyholder buys not only

some amount of term insurance and the equivalent of a savings certificate, but also an equity-like interest in the insurance company."). Lower federal courts have characterized the mutual life insurance contract to include, *inter alia*, the common equitable ownership of the assets by the members which may at their option be transferred into legal title and reduced to possession by dissolution of the company and the right to choose management. *Mutual Fire Ins. Co. of Germantown v. United States*, 142 F.2d 344, 348 (3d Cir. 1944); *Mutual Benefit Life Ins. Co. v. Herold*, 198 F. 199, 206-212 (D.N.J. 1912), *aff'd*, 201 F. 918 (3d Cir. 1913); *Keystone Auto. Club Cas. Co. v. Commissioner of I.R.S.*, 122 F.2d 886, 890 (3d Cir. 1941); *Rev. Ruling* 74-196, 26 C.F.R. 1.501(c)(15)-1 ["Mutual Insurance Company; definition"].[7]

The constitutional question presented is compelling given that a "statutory conversion" operates as a statutory method for the forced redemption of one's property to be given to another private party. As recognized by the First Circuit in *UNUM Corp. v. United States,* 130 F.3d 501, 511 (1997), a conversion constitutes a redemption of ownership rights:

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[7] *See also Lawrence v. Nelson*, 21 N.Y. 158, 160-161 (1860); *Commonwealth v. Massachusetts Mut. Fire Ins. Co.*, 112 Mass. 116 (1873); *McPherson v. Railway Sav. & Bldg. Ass'n*, 93 Colo. 155, 159-60, 25 P.2d 288, 389 (1933); *Carlton v. Southern Mut. Ins. Co.*, 72 Ga. 371 (1884); MAY ON INSURANCE, ch. XXXI, § 548 "Of Mutual Insurance" (1900); *Spruance v. Farmers' & Merchants' Ins. Co.*, 9 Colo. 73, 77, 10 P. 285 (Colo. 1886) (citing *Union Ins. v. Hoge*, 62 U.S. 35 (1858)); *Mygatt v. New York Prot. Ins.*, 21 N.Y. 52 (1860); *Ohio Mutual Ins. Co. v. Marietta Woolen Factory*, 3 Ohio St. 348, 351 (1854); *Krugh v. Lycoming Fire Ins.*, 77 Pa. 15 (1874); R. KEETON, INSURANCE LAW at 33 (3d ed. 1988).

> Here, Union Mutual purchased its policyholders' equity interests and transferred them to UNUM. UNUM in turn exchanged the policyholders' membership interests in Union Mutual for stock in UNUM or cash. UNUM was financially in no worse a position after "paying out" $522 million worth of stock to implement the demutualization than it was before the transaction occurred. What changed was the form of ownership, precisely the topic which capital transactions typically involve.

The widespread effect of statutory conversions on mutual policyholders' property rights presents yet another substantial reason for granting certiorari.

CONCLUSION

Wherefore, it is respectfully requested that this Honorable Court accept certiorari here and in the related case of *Gayman v. Principal Financial Services, Inc.*, 311 F.3d 851 (7th Cir. 2002), in which a Petition for Writ of Certiorari is also being filed, to address these important questions.

Respectfully submitted,

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Dated: April 21, 2003

APPENDIX A

316 F.3d 308

United States Court of Appeals,
Second Circuit.

Stephen TANCREDI and Ronald Speidel,
Plaintiffs-Appellants,
v.
METROPOLITAN LIFE INSURANCE COMPANY, a New York stock company and Metlife, Inc., a Delaware Holding Company, Defendants-Appellees.

Docket No. 01-7888.

Argued: June 5, 2002.
Decided: Jan. 21, 2003.

James M. Pietz, Pittsburgh, Pennsylvania (*Michael P. Malakoff*, Malakoff Doyle & Finberg, Pittsburgh, Pennsylvania, Peter Wasylyk, Providence, Rhode Island, on the brief), for Plaintiffs-Appellants.

Bruce E. Yannett, New York, New York (Carl Micarelli, Debevoise & Plimpton, New York, New York, Colby A. Smith, Debevoise & Plimpton, Washington, D.C., Duncan J. Logan, Metropolitan Life Insurance Company, New York, New York, on the brief), for Defendants-Appellees.

Before: *KEARSE* and *McLAUGHLIN*, Circuit Judges, and DANIELS, District Judge.*

KEARSE, Circuit Judge.

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* Honorable George B. Daniels, United States District Judge for the Southern District of New York, sitting by designation.

Plaintiffs Stephen Tancredi and Ronald Speidel appeal from a judgment of the United States District Court for the Southern District of New York, Lewis A. Kaplan, *Judge,* dismissing their claims, brought under 42 U.S.C. § 1983 (2000), that the conversion of defendant Metropolitan Life Insurance Company ("MetLife") from a mutual to a stock life insurance company in accordance with New York Insurance Law, *see* N.Y. Ins. Law § 7312 (McKinney 2000), violated their rights under the Takings Clause, the Contracts Clause, the Due Process Clause, and the Commerce Clause of the United States Constitution. The district court granted the motion of MetLife and its parent, defendant Metlife, Inc., a Delaware holding company ("MetLife Holding"), to dismiss the complaint pursuant to Fed.R.Civ.P. 12(b)(6) for failure to state a claim on which relief can be granted, ruling principally that the complaint's allegations were insufficient to show state action, and, alternatively, that the allegations were insufficient to show interference with plaintiffs' property or contract rights or with interstate commerce. Plaintiffs challenge these rulings on appeal. For the reasons that follow, we affirm the dismissal on the ground that the complaint failed to allege facts that, if proven, would establish that defendants acted under color of state law.

I. BACKGROUND

The complaint, whose factual allegations are taken as true for purposes of reviewing a dismissal for failure to state a claim, alleged the following events. MetLife was chartered by the State of New York ("State") in 1915 to do business as a mutual life insurance company, *i.e.,* a company whose policyholders have membership interests entitling them generally to vote at company meetings and

to share equitably in dividends declared by the company's board of directors. Tancredi and Speidel were members of that mutual company.

Section 7312 of the New York Insurance Law, enacted in 1988, permits a State-chartered mutual life insurance company to reorganize into a domestic stock life insurer if certain prerequisites are met. *See* N.Y. Ins. Law § 7312. In order to accomplish such a reorganization, the insurer must adopt "a plan which must be fair and equitable to the policyholders." *See id.* § 7312(d). The reorganization plan must set forth, *inter alia,* the purpose and form of the reorganization, the process by which the reorganization will occur, and the consideration to be given to the policyholders in exchange for their membership interests in the mutual company. *See id.* § 7312(e). The mutual company's policyholders must be given notice and a copy of the plan, along with such other information as may be required by the Superintendent of the State's Department of Insurance ("Superintendent"). *See id.* § 7312(k)(1). To be carried out, the reorganization must be approved by the votes of two-thirds of the policyholders voting, *see id.* § 7312(k)(2), and by the Superintendent, *see id.* § 7312(j).

In September 1999, MetLife's board of directors adopted a plan of reorganization ("Plan" or "Reorganization Plan") to convert MetLife from a mutual insurance company into a stock insurance company that would be a wholly owned subsidiary of MetLife Holding. The Plan provided that policyholders' membership interests in the mutual company would be converted into cash, policy credits, or stock in MetLife Holding. The stock of MetLife Holding would be publicly traded. MetLife notified the Superintendent of the Plan and of subsequent modifications of the Plan. MetLife sent its policyholders copies of

the Reorganization Plan and other materials, notified them of the voting period, and informed them that the Superintendent would hold a public hearing on the Plan prior to the vote.

The Superintendent held a public hearing on the MetLife Reorganization Plan in January 2000. When the voting period ended on February 7, 2000, more than 93% of the policyholders voting had voted in favor of the reorganization.

Section 7312 also allows a company to amend its reorganization plan after it has been approved by the requisite number of policyholders, but only if the Superintendent finds that the amendments do not materially disadvantage any policyholder. *See id.* § 7312(f). In March 2000, MetLife amended its Plan to allow private placements of common stock concurrently with the planned initial public offering. The Superintendent conducted legal, financial, actuarial, and accounting analyses of the MetLife Plan and its amendments, and reviewed the comments received from policyholders. In April 2000, the Superintendent found that the proposed reorganization did not violate any applicable law, was fair and equitable to policyholders, and was not detrimental to the public. The Superintendent also found that the amendment made to the Plan subsequent to the policyholder vote would not be materially disadvantageous to the interests of policyholders. The Superintendent therefore officially approved the MetLife reorganization. Thereafter, MetLife implemented the Plan.

Tancredi and Speidel promptly commenced the present action under 42 U.S.C. § 1983, alleging that the implementation of the Reorganization Plan violated their

rights, and those of all similarly situated policyholders of the mutual company, under the Takings Clause of the Fifth and Fourteenth Amendments and under the Commerce and Contracts Clauses of Article I, on the ground that policyholders had received less than the fair market value of their membership interests at the time of the reorganization. The complaint alleged, *inter alia,* that MetLife had acted under color of state law in proposing and implementing the Plan (*see* Complaint ¶ 30); that the Superintendent was a joint participant in MetLife's decision to reorganize and in determining the value of the policyholders' contractual and voting interests (*see id.* ¶¶ 31-32); and that "[t]he decision whether the Company could demutualize, as required under state law, was a joint/state [*sic*] private actor decision" (*id.* ¶ 33).

Defendants moved to dismiss the complaint for failure to state a claim, arguing principally that they were private actors and that the complaint lacked any sustainable allegation that there was state action, an essential component of an action under § 1983. Defendants also argued that plaintiffs could not establish that their membership interests in the mutual company constituted property, that their contractual rights had been unconstitutionally impaired, or that the MetLife Reorganization Plan violated the dormant Commerce Clause of the Constitution. Defendants argued further that plaintiffs' Commerce Clause challenge to the State laws permitting insurers to reorganize was foreclosed by the McCarran-Ferguson Act, 15 U.S.C. §§ 1011-1015.

In an opinion reported at 149 F.Supp.2d 80 (2001), the district court granted the motion to dismiss, ruling principally that the complaint failed to show state action. The

district court also found merit in defendants' other challenges.

Judgment was entered dismissing the complaint, and this appeal followed.

II. DISCUSSION

On appeal, plaintiffs contend that the district court erred in ruling that their complaint did not sufficiently allege state action, arguing that the Superintendent's review and approval of MetLife's plan of reorganization under the standards set by § 7312 constituted state compulsion, significant encouragement and participation by the State, a delegation of the public taking power, and the entwinement of the State in the management of MetLife. They also contend that the complaint sufficiently alleged impairment of their contract or property rights, and violation of the dormant Commerce Clause. For the reasons that follow, we conclude that the district court correctly dismissed the complaint for lack of a sufficient allegation of state action, and we affirm on that ground.

Section 1983 of 42 U.S.C. provides, in pertinent part, that

> [e]very person who, under color of any statute, ordinance, regulation, custom, or usage, of any State . . . subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress. . . .

42 U.S.C. § 1983. A plaintiff pressing a claim of violation of his constitutional rights under § 1983 is thus required to show state action. *Rendell-Baker v. Kohn,* 457 U.S. 830, 838, 102 S.Ct. 2764, 73 L.Ed.2d 418 (1982) ("'In cases under § 1983, "under color" of law has consistently been treated as the same thing as the "state action" required under the Fourteenth Amendment.'" (quoting *United States v. Price,* 383 U.S. 787, 794 n. 7, 86 S.Ct. 1152, 16 L.Ed.2d 267 (1966))); *United States v. International Brotherhood of Teamsters,* 941 F.2d 1292, 1295 (2d Cir.1991) ("Because the United States Constitution regulates only the Government, not private parties, a litigant claiming that his constitutional rights have been violated must first establish that the challenged conduct constitutes 'state action.'").

When analyzing allegations of state action, we begin "by identifying the specific conduct of which the plaintiff complains." *American Manufacturers Mutual Insurance Co. v. Sullivan,* 526 U.S. 40, 51, 119 S.Ct. 977, 143 L.Ed.2d 130 (1999) (internal quotation marks omitted). In order to satisfy the state action requirement where the defendant is a private entity, the allegedly unconstitutional conduct must be "fairly attributable" to the state. *Id.* at 50, 119 S.Ct. 977. Conduct that is ostensibly private can be fairly attributed to the state only if there is "such a 'close nexus between the State and the challenged action' that seemingly private behavior 'may be fairly treated as that of the State itself.'" *Brentwood Academy v. Tennessee Secondary School Athletic Ass'n,* 531 U.S. 288, 295, 121 S.Ct. 924, 148 L.Ed.2d 807 (2001) (quoting *Jackson v. Metropolitan Edison Co.,* 419 U.S. 345, 351, 95 S.Ct. 449, 42 L.Ed.2d 477 (1974)). State action may properly be found where the state exercises "coercive power" over, is "entwined in [the]

management or control" of, or provides "significant encouragement, either overt or covert" to, a private actor, or where the private actor "operates as a willful participant in joint activity with the State or its agents," is "controlled by an agency of the State," has been delegated a "public function" by the state, or is "entwined with governmental policies." *Brentwood Academy v. Tennessee Secondary School Athletic Ass'n,* 531 U.S. at 296, 121 S.Ct. 924 (internal quotation marks omitted). The management of a corporation is not a public function; and a state's permission for a corporation to organize itself in a particular manner is not the delegation of governmental authority. *See, e.g., Gayman v. Principal Financial Services, Inc.,* 311 F.3d 851 (7th Cir.2002) (affirming dismissal of constitutional challenge to demutualization of former mutual insurer's parent company for lack of state action).

State approval of an action by a regulated entity does not constitute state action "where the initiative comes from [the private entity] and not from the State" and the state "has not put its own weight on the side of the proposed practice by ordering it." *Jackson v. Metropolitan Edison Co.,* 419 U.S. at 357, 95 S.Ct. 449. "Action taken by private entities with the mere approval or acquiescence of the State is not state action." *American Manufacturers Mutual Insurance Co. v. Sullivan,* 526 U.S. at 52, 119 S.Ct. 977; *see also Flagg Brothers, Inc. v. Brooks,* 436 U.S. 149, 164, 98 S.Ct. 1729, 56 L.Ed.2d 185 (1978) ("This Court . . . has never held that a State's mere acquiescence in a private action converts that action into that of the State."). Thus, a regulatory agency's performance of routine oversight functions to ensure that a company's conduct complies with state law does not so entwine the agency in corporate management as to constitute state action. *See,*

e.g., Cranley v. National Life Insurance Co., 318 F.3d 105 (2d Cir.2003) (two-step demutualization of a life insurance company as authorized by Vermont law does not constitute state action); *Gayman v. Principal Financial Services, Inc.*, 311 F.3d 851.

In the present case, the conduct of which plaintiffs complain is defendants' conversion of MetLife from a mutual company to a stock company. The complaint, however, failed to allege facts that, if established, would show that MetLife's reorganization was conduct that was fairly attributable to the State. The reorganization was initiated by MetLife's board of directors. The Reorganization Plan was approved unanimously by the board, and it was approved overwhelmingly by the policyholders, all before there had been any regulatory approval by the Superintendent. And in granting approval, the Superintendent merely found that MetLife met the statutorily mandated standards for such a reorganization and allowed the process to go forward as planned. There is no basis in the complaint's factual allegations for inferring that the State ordered MetLife to convert to a stock company, or that it employed any sort of coercion to control MetLife or induce MetLife to reorganize, or that it became entwined in MetLife's management. Nor did MetLife's amendment of its Plan after the policyholders' vote carry any indicia of state action. Although the amendment could not become effective without a finding by the Superintendent that the proposed changes would not disadvantage policyholders, those changes were not suggested, encouraged, or required by the Superintendent. Rather, the modifications were initiated by MetLife's board of directors, which was empowered to do so by the terms of the Plan itself, the Plan

having been approved by the policyholders. The Superintendent's review to ensure that the changes met the minimum legal requirements of § 7312 before granting regulatory approval did not constitute such involvement in the reorganization decision that these private defendants could be considered state actors.

Plaintiffs contend that their complaint is sufficient to allege state action by analogy to *Yee v. City of Escondido,* 503 U.S. 519, 112 S.Ct. 1522, 118 L.Ed.2d 153 (1992). We are unpersuaded. In *Yee,* the city had authorized a private entity to engage in conduct that required an unrelated property holder to allow the physical occupation of his land, and the Court stated that "[t]he Takings Clause requires compensation if the government authorizes a compelled physical invasion of property." *Id.* at 527, 112 S.Ct. 1522. The change in MetLife's corporate form, converting it from a mutual to a stock insurance company, is not akin to the physical invasion or occupation of property.

Because plaintiffs' claims fail for lack of a sufficient allegation of state action, we need not reach the other issues decided by the district court.

CONCLUSION

We have considered all of plaintiffs' contentions on this appeal and have found them to be without merit. For the foregoing reasons, the judgment of the district court is affirmed.

MANDATE

United States Court of Appeals
FOR THE
SECOND CIRCUIT,

At a stated Term of the United States Court of Appeals for the Second Circuit held at the United States Courthouse, Foley Square, in the City of New York, on the 21st day of January, two thousand and three.

Before: Hon. Amalya L. Kearse,
Hon. Joseph M. McLaughlin,
Circuit Judges
Hon. George B. Daniels*,
District Judge

Docket No. 01-7888

STEPHEN TANCREDI and RONALD SPEIDEL,

Plaintiffs-Appellants,

v.

METROPOLITAN LIFE INSURANCE COMPANY, a New York stock company and METLIFE, INC., a Delaware Holding Company,

Defendants-Appellees.

(Filed Jan. 21, 2003)

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* The Honorable George B. Daniels, United States District Judge for the Southern District of New York, sitting by designation.

Appeal from the United States District Court for the Southern District of New York.

This cause came on to be heard on the transcript of record from the United States District Court for the Southern District of New York and was argued by counsel.

On consideration whereof, it is hereby ORDERED, ADJUDGED and DECREED that the judgment of said district court be and it hereby is AFFIRMED in accordance with the opinion of this Court.

A TRUE COPY
Roseann B. MacKechnie
CLERK

by [Illegible]
DEPUTY CLERK

FOR THE COURT:
ROSEANN B.
MACKECHNIE, Clerk
by
/s/ Laura Bass Penn
Laura Bass Penn
Motions Staff
Attorney

ISSUED AS MANDATE: Feb. 21, 2003

APPENDIX B

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

---------- X

STEPHEN TANCREDI, et ano.,

Plaintiff,

-against-

METROPOLITAN LIFE INSURANCE COMPANY, et ano.,

Defendants.

---------- X

00 **CIVIL** 5780 (LAK)

JUDGMENT

(Filed Jul. 11, 2001)

DOC #16

Defendants having moved to dismiss pursuant to Fed. R. Civ. P. 12(b), and the matter having come before the Honorable Lewis A. Kaplan, United States District Judge, and the Court, on July 9, 2001, having rendered its Memorandum Opinion (85801) granting defendants' motion to dismiss, it is,

ORDERED, ADJUDGED AND DECREED: That for the reasons stated in the Court's Memorandum Opinion (85801) dated July 9, 2001, defendants' motion to dismiss is granted.

Dated: New York, New York
July 11, 2001

JAMES M. PARKISON
Clerk of Court
BY: [Illegible]
Deputy Clerk

THIS DOCUMENT WAS ENTERED ON THE DOCKET ON 7/12/01

APPENDIX C

149 F.Supp.2d 80

United States District Court.
S.D. New York.

Stephen TANCREDI, et ano., Plaintiff,
v.
METROPOLITAN LIFE INSURANCE COMPANY, et ano., Defendants.

No. 00 CIV 5780 LAK.

July 9, 2001.

Michael P. Malakoff, Malakoff Doyle & Finberg, P.C., Pittsburgh, PA, Barry A. Weprin, Milberg Weiss Bershad Hynes & Lerach, LLP, New York City, Peter Wasylyk, Law Offices of Peter Wasylyk, Providence, RI, for Plaintiff.

Bruce E. Yannett, Colby A. Smith, Carl Micarelli, Debevoise & Plimpton, New York City, Duncan J. Logan, Metropolital [sic] Life Insurance Company, for Defendants.

MEMORANDUM OPINION

KAPLAN, District Judge.

On April 7, 2000, Metropolitan Life Insurance Company ("MetLife") converted from a mutual to a stock insurance company pursuant to New York Insurance Law § 7312, which was enacted to permit such conversions. The conversion received the required approval of the New York Superintendent of Insurance based on his finding that the plan of reorganization was fair and equitable to policy holders.

Plaintiffs bring this purported class action on behalf of MetLife policy holders pursuant to 42 U.S.C. § 1983. They

claim that the conversion deprived them of their federal constitutional rights in that it took property without just compensation (Counts I and II), took their property by private sale of a near-controlling interest in the company without advance notice or opportunity to vote (Count III), deprived non-New York property holders of their rights without just compensation and thereby improperly regulated interstate commerce (Count IV), and deprived policy holders of various contractual rights in violation of the Contract Clause (Counts V-VIII). Defendants[1] have moved to dismiss the complaint primarily on the grounds that they were not state actors, that plaintiffs' membership interests in a mutual organization do not constitute property, that the McCarran-Ferguson Act[2] insulates state insurance regulation from Commerce Clause challenge, and that for any and all of these reasons the complaint fails to state a claim upon which relief may be granted. Defendants argue in the alternative that this Court should abstain from hearing the case in favor of pending state court challenges.

In resolving the motion to dismiss, the Court accepts as true the factual allegations set forth in the complaint and draws all reasonable inferences in favor of plaintiffs.[3] It may dismiss only if "it appears beyond doubt that the plaintiff[s] can prove no set of facts in support of [their]

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[1] Defendants are Metropolitan Life Insurance Co., a New York stock company, and MetLife, Inc., a Delaware holding company.

[2] 15 U.S.C. § 1011-15.

[3] *See Bernheim v. Litt,* 79 F.3d 318, 321 (2d Cir.1996).

claim which would entitle [them] to relief."[4] Although Rule 12(b) motions are made solely upon the pleadings,[5] the Court considers also those documents to which plaintiffs refer in the complaint.[6]

I. State Action

Section 1983 permits claims for violations of constitutional rights committed "under color of" state law, a phrase synonymous with the "state action" required by the Fourteenth Amendment.[7] Thus, state action is an indispensable element of each of plaintiffs' claims for relief.[8]

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[4] *Conley v. Gibson,* 355 U.S. 41, 45-46, 78 S.Ct. 99, 2 L.Ed.2d 80 (1957).

[5] FED. R. CIV. P. 12(b).

[6] *See, e.g., International Audiotext Network, Inc. v. AT & T Co.,* 62 F.3d 69, 72 (2d Cir.1995).

[7] *Rendell-Baker v. Kohn,* 457 U.S. 830, 838, 102 S.Ct. 2764, 73 L.Ed.2d 418 (1982).

[8] To the extent that some aspects of the motion to dismiss may be decided on non-constitutional grounds, it [sic] its this Court's obligation to do so. *See In re Treco,* 240 F.3d 148, 161-162 (2d Cir.2001) (deciding on securitization rather than constitutional takings ground because "in addressing a constitutional question whose answer would have no effect on the outcome of the case, we would have violated the 'fundamental and longstanding principle of judicial restraint [that] requires . . . courts [to] avoid reaching constitutional questions in advance of the necessity of deciding them' ") (quoting *Horne v. Coughlin,* 178 F.3d 603, 605 (2d Cir.), *cert. denied,* 528 U.S. 1052, 120 S.Ct. 594, 145 L.Ed.2d 493 (1999) (quoting *Lyng v. Northwest Indian Cemetery Protective Ass'n,* 485 U.S. 439, 445, 108 S.Ct. 1319, 99 L.Ed.2d 534 (1988))). While Counts I, II, and III may be decided on non-constitutional grounds – if the membership interests did not constitute property, there can be no takings or due process claims – the remaining Counts require constitutional adjudication. Accordingly, the Court discusses state action first,

(Continued on following page)

Action taken by a private entity constitutes state action only when "there is such a close nexus between the State and the challenged action that seemingly private behavior may be fairly treated as that of the State itself."[9] Action by a private entity pursuant to statutory authorization retains its private character and is not actionable under Section 1983.[10]

Here, plaintiffs allege nothing more than that MetLife took advantage of authority granted by the New York Insurance Law to elect to become a stock company. The fact that the Superintendent of Insurance granted approval did not transform MetLife's election into state action. Approval by a state officer or agency, where the state "has not put its own weight on the side of the proposed practice by ordering it", does not transmute a practice initiated by the [private entity] and approved by the [state] into "state action."[11]

Jackson v. Metropolitan Edison Co.[12] illustrates the point. The Court there found no state action in a utility

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as its existence is a prerequisite to a majority of claims in the Complaint.

[9] *Brentwood Academy v. Tennessee Secondary School Athletic Ass'n.*, 531 U.S. 288, 121 S.Ct. 924, 930, 148 L.Ed.2d 807 (2001) (quoting *Jackson v. Metropolitan Edison Co.*, 419 U.S. 345, 351, 95 S.Ct. 449, 42 L.Ed.2d 477 (1974)).

[10] *American Manufacturers Mutual Insurance Co. v. Sullivan*, 526 U.S. 40, 50, 119 S.Ct. 977, 143 L.Ed.2d 130 (1999); *Lugar v. Edmondson*, 457 U.S. 922, 939, 102 S.Ct. 2744, 73 L.Ed.2d 482 (1982); *Flagg Bros., Inc. v. Brooks*, 436 U.S. 149, 164-65, 98 S.Ct. 1729, 56 L.Ed.2d 185 (1978).

[11] *Jackson*, 419 U.S. at 357, 95 S.Ct. 449.

[12] *Id.*, 419 U.S. 345, 95 S.Ct. 449, 42 L.Ed.2d 477.

company's decision, upon state approval, to terminate a customer's electric service, noting that "the nature of governmental regulation of private utilities is such that a utility may frequently be required by the state regulatory scheme to obtain approval for practices a business regulated in less detail would be free to institute without any approval from a regulatory body."[13] The same may be said of the state's regulation of insurance companies. Indeed, a majority of courts confronted with the issue of approval of mutual-to-stock conversion plans similar to that here has found no state action.[14]

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[13] *Id.* at 357, 95 S.Ct. 449. *See also American Manufacturers,* 526 U.S. at 41, 119 S.Ct. 977 ("Also rejected is . . . the assertion that the challenged decisions are state action because insurers must first obtain 'authorization' or 'permission' from the [state]. . . . ") (citing *Blum v. Yaretsky,* 457 U.S. 991, 1007, 102 S.Ct. 2777, 73 L.Ed.2d 534 (1982)). *American Manufacturers* left open the issue of to what extent state approval that goes beyond "requiring the completion of a form" or other such "paper shuffling" constitutes state action. Certainly the Superintendent's detailed, 103-page report on the adequacy of the demutualization plan went beyond mere paper shuffling; but its length and depth of analysis, without more, does not imply state action under any of the criteria established for so finding. The report did not coerce the proposed activity, *see Blum,* 457 U.S. at 1004, 102 S.Ct. 2777, or significantly encourage it, *see id.,* or turn the decision to demutualize into a "joint activity" between the state and MetLife, *see Lugar,* 457 U.S. at 941, 102 S.Ct. 2744, or make MetLife a state agent, *see Pennsylvania v. Board of Directors of City Trusts of Philadelphia,* 353 U.S. 230, 231, 77 S.Ct. 806, 1 L.Ed.2d 792 (1957), or delegate to MetLife a public function, *see Edmonson v. Leesville Concrete Co.,* 500 U.S. 614, 627-28, 111 S.Ct. 2077, 114 L.Ed.2d 660 (1991), or render the state "entwined" in MetLife's "management or control," *Evans v. Newton,* 382 U.S. 296, 299, 86 S.Ct. 486, 15 L.Ed.2d 373 (1966). *See generally Brentwood Academy,* at 930 (listing potential criteria for finding state action).

[14] *See Ordower v. OTS,* 999 F.2d 1183, 1187 (7th Cir.1993); *Cranley v. Nat'l Life Ins. Co. of Vermont,* 144 F.Supp.2d 291 (D.Vt.2001);

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Nor did MetLife become a state actor on the theory that it exercised state power to "take" the property interests of the policy holders. The power to amend a corporate charter – including changes such as mergers, reorganizations and dissolutions, all of which alter the rights of stockholders – is a power that nearly all corporations long have exercised without becoming state actors.[15]

Crandall v. Alderfer, No. 97-CV-957, 1999 WL 116293, *3 (E.D.Pa.1999). *But see Lovell v. Peoples Heritage Savings Bank,* 776 F.Supp. 578 (D.Me.1991) (finding state banking superintendent's approval of bank's mutual-to-stock conversion plan constituted state action). *Lovell* offers a detailed analysis of the Supreme Court's major decisions in the area of state action, concluding that "when private parties make use of state procedures with the overt, significant assistance of state officials, state action may be found." *Lovell,* 776 F.Supp. at 586 (quoting *Tulsa Professional Collection Services, Inc. v. Pope,* 485 U.S. 478, 486, 108 S.Ct. 1340, 99 L.Ed.2d 565 (1988)). While not disputing this reading of the law, the Court declines to adopt *Lovell's* application of it. The New York Insurance Law obligated the Superintendent to approve the conversion plan if he found that the proposed plan did not violate the Insurance Law, was fair and equitable to the policy holders, and was not detrimental to the public and if, after the conversion was effected, the reorganized insurer would have an amount of capital and surplus the Superintendent deemed reasonably necessary for its future solvency. N.Y. INS. L. § 7312(j) (McKinney 2000). The Superintendent's approval under this statutory scheme did not constitute "overt, significant assistance." Rather, it reflects only the legislature's decision to allow regulated companies to exercise an option under certain statutorily prescribed conditions. MetLife exercised that option independently, without encouragement from the state, and its compliance with the statutory requirements insured approval.

[15] *See, e.g., Broad v. Sealaska Corp.,* 85 F.3d 422, 430-31 (9th Cir.1996), *cert. denied,* 519 U.S. 1092, 117 S.Ct. 768, 136 L.Ed.2d 714 (1997) (statutorily authorized transaction that altered shareholder rights not governmental action); *Ordower,* 999 F.2d at 1187 (demutualization eliminating membership rights not governmental action); *Crandall,* 1999 WL 116293, at *3 (same).

Accordingly, plaintiffs have failed to allege the existence of state action.

II. Property Interest

Even if plaintiffs had sufficiently alleged state action, the claims in Counts I through III of the complaint would fail because plaintiffs cannot establish that their membership interests in the mutual organization constituted property.

To establish a property interest, plaintiffs must demonstrate "a legitimate claim of entitlement" arising from "an independent source such as state law."[16] Plaintiffs find the source of their alleged property rights in their "contractual right," allegedly guaranteed by MetLife's 1915 charter, "to (1) ownership and control of MetLife; (2) a distribution of equity based upon historic contributions; and (3) receipt of insurance at cost through participation."[17] Yet plaintiffs right to receive a return of excess premiums as surplus (what plaintiffs term "equity") remains under the demutualization plan,[18] as does their

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[16] *Martz v. Incorporated Village of Valley Stream,* 22 F.3d 26, 29-30 (2d Cir.1994) (quoting *Board of Regents v. Roth,* 408 U.S. 564, 577, 92 S.Ct. 2701, 33 L.Ed.2d 548 (1972)).

[17] Pl. Mem. at 11-12.

[18] *See* Cpt. Ex. D (demutualization plan) §§ 8.1(a), 8.2(d), 8.4(a); N.Y. INS. L. § 7312(a)(3) (McKinney 2000) ("the right to participate in distribution of surplus, expressly conferred upon the policy holders by their policies or contracts," not among the "membership interests" extinguished in a demutualization). Contrary to plaintiffs' assertions, the Plan does not require that dividends be calculated by a "historic plus" method, *see infra* notes 33-36 and accompanying text. In any event, plaintiffs have no right to receive dividends apportioned in a

(Continued on following page)

ability as continuing policy holders to receive insurance.[19] Moreover, plaintiffs' interest in MetLife as a mutual company did not rise to the level of a property interest such as to render policy holders "owners" of the corporation. "A member of [a mutual] corporation has no definite property interest which can be ascertained and recovered. . . . The assets belong to the corporation, and no member has any interest in any aliquot part thereof, and the unascertained interest of a mere policy holder is quite insufficient to sustain an . . . action brought to prevent the corporation from doing what the statute authorizes it to do."[20] Plaintiffs' effort to limit *Grobe*'s holding to the issue of voting rights is misplaced; *Grobe* more broadly held that the plaintiff there lacked a property interest sufficient to

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particular way, as the source of any such right is found only in the charter, *Lord v. Equitable Life Assur. Soc'y of the United States,* 194 N.Y. 212, 230, 87 N.E. 443 (1909); *Greeff v. Equitable Life Assur. Soc'y of the United States,* 160 N.Y. 19, 31, 54 N.E. 712 (1899), which is subject to amendment, *see infra* notes 25-31 and accompanying text.

[19] It is unclear what plaintiffs mean by "at cost." To the extent they refer to their ability to obtain insurance under a "participating policy," whereby excess premiums are returned to the policyholder in the form of dividends at the company's discretion if actual expenses turn out to be lower than predicted expenses, this practice has no bearing on demutualization. Both mutual and stock companies may have participating policies. *See* N.Y. INS. L. § 4231(e) – (f) (McKinney 2000). And the participating policy holders' right to receive a return of excess premiums (what plaintiffs term "a distribution of equity") is unimpeded by demutualization. *See supra* note 18.

[20] *Grobe v. Erie County Mutual Ins. Co.,* 39 A.D. 183, 186, 57 N.Y.S. 290, 292 (4th Dept.1899), *aff'd on opinion below,* 169 N.Y. 613, 62 N.E. 1096 (1902). Although *Grobe* acknowledged that members of the company might have a property interest as a result of "some definite right secured to [them] by a contract with the corporation," 39 A.D. at 186, 57 N.Y.S. at 292, it held that the company's articles of association (similar to the charter here) were not such a contract. *Id.*

sustain any constitutional challenge to the New York Insurance Law.[21] And *Grobe* is not alone in finding that membership interests in a mutual company are too insubstantial to merit constitutional protection.[22]

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[21] *See id.* ("I am unable to see on what theory [the insurance statutes] can be successfully challenged as unconstitutional. These statutes do not deprive any member of a mutual insurance company of any property right. . . . ").

[22] *See Society for Savings v. Bowers,* 349 U.S. 143, 150, 75 S.Ct. 607, 99 L.Ed. 950 (1955) (membership interests in a mutual company are contingencies that "hardly rise to the level of an expectancy"); *Ordower,* 999 F.2d at 1187 (membership interest in mutual savings and loan company "is a liquidation preference, not a transferable property right"); *York v. Federal Home Loan Bank Bd.,* 624 F.2d 495, 499-500 (4th Cir.), *cert. denied,* 449 U.S. 1043, 101 S.Ct. 621, 66 L.Ed.2d 504 (1980) (extinguishment of membership interests through savings and loan demutualization not deprivation of property); *Lovell v. One Bancorp,* 818 F.Supp. 412, 419-21 (D.Me.1993) (same), *aff'd,* 14 F.3d 44, 1994 WL 3369 (1st Cir.1994) (table). Plaintiffs attempt to distinguish these decisions, arguing that a member of a savings and loan mutual company has a debtor/creditor relationship that subsists in a demutualization, while a member of a mutual insurance company has a "contractually vested interest" destroyed in a demutualization, which "allow[s] . . . public shareholders to obtain the income and/or profits from the sale of insurance." Pl. Mem. at 23. The argument begs the question, as it is far from clear that policy holders in a mutual insurance company have any vested interest; they do not share in profits. *See* J.A.C. Hetherington, *Fact v. Fiction: Who Owns Mutual Insurance Companies,* 1969 Wis. L.Rev. 1068, 1075 n. 26 (1969) ("the mutual insurance dividend, unlike a dividend on capital stock, is a return of an overcharge and is not a distribution of earnings on profits"). Moreover, the true analogue of the creditor/debtor relationship is the insured/insurer relationship which, like the former relationship in a savings and loan demutualization, remains unaltered by MetLife's demutualization.

Accordingly, plaintiffs lack a property interest upon which to assert takings or due process violations under the federal Constitution.

III. Contractual Rights

Plaintiffs cite MetLife's 1915 charter as the alleged "contractual" source of their claimed property rights. They argue that the charter "recognized that MetLife, previously a stock company, had reacquired its capital stock and that it would thereafter 'continue to be a mutual company without capital stock,' and that the operation 'would have perpetual succession.'"[23] From this plaintiffs conclude that the demutualization plan constituted an unconstitutional impairment of contract.[24] They contend that the demutualization process impaired policy holders' voting rights under the charter (Count V), that it impaired policy holders' rights to surplus (Count VI), and that the New York law pursuant to which the demutualization was effected constituted an *ex post facto* law that unconstitutionally altered policy holders' various rights under the charter (Count VII).

MetLife's charter from the time of its inception was subject to statutory provisions for amending charters.[25] Moreover, the Constitution of the State of New York specifically reserves to the Legislature the right to alter

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[23] Pl. Mem. at 12 (citing Cpt. Ex. C Arts. VI, X).

[24] *See* U.S. CONST. Art. I, § 10.

[25] *See, e.g.*, N.Y. INS. L. § 1208(c) (McKinney 2000).

laws under which corporations originally were formed.[26] Thus, "every person who became a member of the corporation did so with full knowledge that it might at any time be changed from a mutual to a stock corporation . . . and that under this provision of the constitution those terms might at any time be changed by the legislature."[27] In *Polk v. Mutual Reserve Fund Life Association of New York*,[28] the Supreme Court held that a New York corporation's amendment of its charter was not an impairment of contract because the above-quoted constitutional provision put the company's members on notice that the charter could be amended, just as if there had been a notice provision in the text of the charter itself.[29] New York's constitutional provision allowed MetLife to convert from a stock to a mutual company in 1915, pursuant to the New York State Legislature's authorization to do so.[30] The same

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[26] N.Y. CONST. Art. 10, § 1 ("Corporations may be formed under general laws. . . . All general laws and special acts passed pursuant to this section may be altered from time to time or repealed.").

[27] *Grobe*, 39 A.D. at 186, 57 N.Y.S. at 292.

[28] 207 U.S. 310, 28 S.Ct. 65, 52 L.Ed. 222 (1907).

[29] *Id.* at 325-26, 28 S.Ct. 65 (quoting *Looker v. Maynard*, 179 U.S. 46, 52, 21 S.Ct. 21, 45 L.Ed. 79 (1900)). *See also Wright v. Minnesota Mutual Life Ins. Co.*, 193 U.S. 657, 663-64, 24 S.Ct. 549, 48 L.Ed. 832 (1904) (corporate charters may provide for their own amendment without running afoul of the constitutional provision against impairment of contracts).

[30] *See* N.Y. INS. L. § 95, codified as amended, N.Y. INS. L. § 7302 (McKinney 2000); Cpt ¶ 80. *See also Lord*, 194 N.Y. at 223, 232, 87 N.E. 443 ("the right to amend, reserved in the Constitution, applies to [corporate charters], because power to amend a general law of incorporation involves power to amend charters taken out under that law"; right to amend is valid under both state and federal constitutions, as "the Legislature has wide latitude of amendment when the general power is reserved either by Constitution or statute").

constitutional provision allows MetLife to act pursuant to the Legislature's 1988 law authorizing demutualization of domestic mutual life insurance companies.[31] Plaintiffs' claims that the Section 7312 of the New York Insurance Law is an *ex post facto* law impairing policy holders' rights under the charter are without merit.

Similarly unavailing are plaintiffs' arguments regarding voting rights. Section 7312(k)(2) of the Insurance Law requires approval of demutualization by two-thirds of the votes cast by eligible policy holders, and it contains no requirement that a majority of policy holders have voted. Thus, the vote complied with the statutory requirements validly enacted by the New York Legislature pursuant to Article 8, Section 1 of the New York Constitution. There is simply no basis upon which to argue that the voting mechanism specified in the statute impaired any contractual rights.[32]

Finally, plaintiffs argue that MetLife's use of a "historic plus" method for distributing net surplus, which speculates as to surplus to be earned in the future, is inconsistent with Article IX of MetLife's charter, which provided that net surplus was to be determined annually, based on the surplus actually earned in the past year.[33] The argument is simply false. Participating policy holders'

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[31] *See* 1988 N.Y. Laws, ch. 683, codified as amended, N.Y. INS. L. § 7312 (McKinney 2000); Cpt ¶ 82.

[32] *See Polk*, 207 U.S. at 326, 28 S.Ct. 65 ("if the legislature has the constitutional power to authorize the [corporate reorganization] by a vote of the majority of the members it has the power to authorize the [reorganzation] by a vote of a majority of directors").

[33] *See* Cpt ¶¶ 113-14.

right to receive a return of excess premiums is unimpeded by demutualization.[34] Moreover, plaintiffs confuse the distribution of surplus with the distribution of consideration in exchange for their membership rights in the mutual company. The Plan uses the "historic plus" method "solely for purposes of calculating the amount of . . . consideration" to be provided members in the form of common stock, cash or policy credits representing the sale of stock in a public offering.[35] The Plan does not call for use of that method to allocate distributions of surplus.[36] Even if the Charter were amended to provide for a different method of surplus allocation, plaintiffs would have no contract claim because the charter may be amended without infringing on the Constitution's prohibition on impairment of contracts.[37] Accordingly, the demutualization plan does not impair plaintiffs' right to surplus under the old charter.

IV. Commerce Clause Claims

Finally, plaintiffs argue that the demutualization plan violates the dormant Commerce Clause of the federal Constitution because out-of-state policy holders have a greater interest in obtaining adequate consideration for their property interests in the mutual company than has New York State in insuring the viability of its life

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[34] *See supra* notes 18-19.

[35] *See* Cpt Ex. D (Plan), §§ 7.1, 7.3.

[36] *See id.* § 7.2(a). *See also id.* § 8.2(d).

[37] *See supra* notes 25-31 and accompanying text.

insurance industry.[38] They argue also that the Plan's failure to assess the adequacy of consideration under the law of the states in which the policy contracts were formed constitutes a "protectionist taking."[39]

For the reasons discussed in Section II of this opinion, plaintiffs' membership interests in the mutual company do not rise to the level of a property interest sufficient to support an allegation of constitutional wrongdoing based on any theory of property rights, including a theory of a "protectionist taking". To the extent that plaintiffs' argument asserts a violation of the dormant Commerce Clause apart from any alleged property interests, it fails as well.

In assessing dormant Commerce Clause challenges, courts first must determine whether the state or local law in question "regulates even-handedly with only incidental effects on interstate commerce, or discriminates against interstate commerce."[40] "In this context, 'discrimination' means different treatment of in-state and out-of-state economic interests that benefits the former and burdens

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[38] *See* Cpt ¶¶ 96-103. The Commerce Clause vests Congress with the exclusive power to regulate interstate and foreign commerce. "A 'dormant' or 'negative' aspect of this grant of power is that a State's power to impinge on interstate commerce is limited." *Automated Salvage Transport, Inc. v. Wheelabrator Environmental Systems, Inc.*, 155 F.3d 59, 74 (2d Cir.1998) (quoting *Hughes v. Oklahoma*, 441 U.S. 322, 326, 99 S.Ct. 1727, 60 L.Ed.2d 250 (1979)).

[39] Pl. Mem. at 18.

[40] *Automated Salvage*, 155 F.3d at 74 (quoting *Hughes*, 441 U.S. at 336, 99 S.Ct. 1727).

the latter."[41] "Non-discriminatory regulations that have only incidental effect on interstate commerce are valid 'unless the burden imposed on such commerce is clearly excessive in relation to the putative local benefits.'"[42]

In-state and out-of-state policy holders are treated identically under the Plan.[43] So there can be no serious contention that the New York Insurance Law, the Plan or the Superintendent's authorization of the conversion discriminates against interstate commerce. Rather, plaintiffs appear to allege a non-discriminatory violation, arguing that the balance of interests tips in favor of out-of-state policy holders because "New York State has virtually no interest in allowing a New York mutual insurer to convert to a New York stock company that is wholly owned and controlled by a Delaware stock corporation, i.e., MetLife, Inc."[44] Plaintiffs' allegation simply is wrong as a matter of law. States obviously have an interest in regulating their own corporations – if they did not, then all state corporate laws, which invariably affect interstate commerce, would be deemed invalid under the dormant Commerce Clause.[45] Yet even assuming that New York's

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[41] *Id.* (quoting *Oregon Waste Systems, Inc. v. Department of Environmental Quality,* 511 U.S. 93, 99, 114 S.Ct. 1345, 128 L.Ed.2d 13 (1994)).

[42] *Id.* (quoting *Pike v. Bruce Church, Inc.,* 397 U.S. 137, 142, 90 S.Ct. 844, 25 L.Ed.2d 174 (1970)).

[43] *See* Cpt. ¶¶ 62, 98-103.

[44] Cpt. ¶ 101.

[45] Congress, for one, has explicitly acknowledged states' interest in regulating their insurance companies. *See* 15 U.S.C. § 1011 (McCarran-Ferguson Act) ("The Congress hereby declares that the continued

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interest were minimal, plaintiffs still fail to show that the burden imposed on the policy holders is "clearly excessive" in relation to that minimal interest. As discussed previously, membership interests in a mutual company do not rise to the level of constitutionally protected property, and if New York law allowed a conversion without consideration for policy holders' membership interests, it likely would survive a Fifth or Fourteenth Amendment challenge. Here, though, defendants have provided consideration. Thus, as a matter of law it cannot be claimed that the conversion places on policy holders a burden "clearly excessive" in relation to New York's interest in regulating its corporations, however minimal plaintiffs might prove that interest to be.

Notwithstanding plaintiffs' inability to mount a dormant Commerce Clause challenge, plaintiffs' claims fail also because the McCarran-Ferguson Act,[46] which designates the regulation and taxation of the insurance business to the states, insulates state insurance regulations from Commerce Clause challenge. Plaintiffs argue that the Act does not apply because it does not grant a state the power to regulate "activities carried on beyond its own borders."[47] Yet the activity that is the subject of plaintiffs' complaint – the conversion from a mutual to stock company – occurred to a New York company in New York, with the approval of the New York Superintendent of Insurance. The use of a Delaware holding company as a

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regulation and taxation by the several States of the business of insurance is in the public interest. . . . ").

[46] 15 U.S.C. §§ 1011-15.

[47] Pl. Mem. at 24-25.

mechanism for the transaction is entirely peripheral to the state regulation, which focuses principally on insuring adequate notice, approval, capitalization, consideration, and business continuity. Plaintiffs thus allege at most that the conversion affected interstate commerce. And the Supreme Court already has ruled on this issue.

In *Prudential Insurance Co. v. Benjamin*,[48] the Supreme Court held that the McCarran-Ferguson Act barred a dormant Commerce Clause challenge of a state tax levied on out-of-state insurance companies, noting that Congress in enacting the Act "clearly put the full weight of its power behind existing and future state legislation to sustain it from any attack under the commerce clause. . . ."[49] Even if the McCarran-Ferguson Act could be construed as nothing more than "a determination by Congress that state taxes, which in its silence might be held invalid as discriminatory, do not place on interstate insurance business a burden which it is unable generally to bear,"[50] the fact remains that the non-discriminatory burden placed on policy holders here is substantially less than the burden placed on companies subject to a discriminatory tax. Accordingly, plaintiffs fail to state a claim under the Commerce Clause.

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[48] 328 U.S. 408, 66 S.Ct. 1142, 90 L.Ed. 1342 (1946).

[49] *Id.* at 431, 66 S.Ct. 1142.

[50] *Id.*

Conclusion

As plaintiffs have failed to allege facts which, if proved, would establish that the defendants acted under color of state law, that plaintiffs' membership interests constituted property, or that defendants' actions impaired plaintiffs' contractual rights or violated the commerce clause, the complaint fails to state a claim upon which relief may be granted. The motion to dismiss is granted.

SO ORDERED.

APPENDIX D

McKinney's Const. Art. 10, § 1

§ 1. [Corporations; formation of]

Corporations may be formed under general laws; but shall not be created by special act, except for municipal purposes, and in cases where, in the judgment of the legislature, the objects of the corporation cannot be attained under general laws. All general laws and special acts passed pursuant to this section may be altered from time to time or repealed.

APPENDIX E

McKinney's Insurance Law § 7312

§ 7312. Reorganization of a domestic mutual life insurer into a domestic stock life insurer

(a) Definitions. As used in this section, the following terms shall have the following meanings:

(1) "Mutual life insurer" means a domestic mutual life insurer.

(2) "Policyholder" means a person, as determined by the records of a mutual life insurer, who is deemed to be the "policyholder" of a policy or annuity contract which is of a type described in paragraphs one, two or three of subsection (a) of section one thousand one hundred thirteen of this chapter for purposes of paragraph three of subsection (a) of section four thousand two hundred ten of this chapter.

(3) "Policyholders' membership interest" means and includes all policyholders' rights as members arising under the charter of the mutual life insurer or this chapter or otherwise by law including, but not limited to, the rights to vote and to participate in any distribution of surplus whether or not incident to a liquidation of the mutual life insurer. The term "policyholders' membership interest" does not include rights, including without limitation the right to participate in the distribution of surplus, expressly conferred upon the policyholders by their policies or contracts other than any right to vote.

(4) "Plan of reorganization" means a plan of conversion or conversion and merger in accordance with this section.

(5) "Reorganized insurer" means the domestic stock life insurer into which a mutual life insurer has been reorganized in accordance with this section.

(6) "Statement date" means the December thirty-first immediately prior to the date the plan of reorganization was adopted.

(7) "Person" means an individual, partnership, firm, association, corporation, joint-stock company, trust, any similar entity or any combination of the foregoing acting in concert.

(b) Demutualization. Any other provision of this chapter to the contrary notwithstanding, upon compliance with the requirements of and completion of the proceedings prescribed by this section and with the written approval of the superintendent, a mutual life insurer may either (1) reorganize into a domestic stock life insurer or (2) reorganize as part of a plan of reorganization in which a majority or all of the common shares of the domestic stock life insurer is acquired by another institution which may be an institution organized for such purpose. As part of the reorganization, the mutual life insurer may merge with a domestic stock insurer, provided that the merging insurers shall comply with the provisions of this chapter applicable to their participation in such a merger.

(c) Plan of reorganization. A plan of reorganization must: (1) demonstrate a purpose and specify reasons for the proposed reorganization; (2) be in the best interest of the mutual life insurer and its policyholders; (3) be fair and equitable to policyholders; (4) provide for the enhancement of the operations of the reorganized insurer; and (5) not substantially lessen competition in any line of insurance business.

(d) Reorganization. The proposed reorganization shall be accomplished by a plan which must be fair and equitable to the policyholders and must comply with the terms and conditions set forth in paragraph one, two or four of this subsection provided however, that a mutual life insurer which has surplus to policyholders, excluding contingently repayable obligations of the mutual life insurer under section one thousand three hundred seven of this chapter, of less than fifty million dollars and which has industrial insurance in force must comply with the terms and conditions set forth in paragraph one, two, three or four of this subsection. Nothing herein contained shall be deemed to give any class of policyholders priority with respect to the assets of any such reorganized insurer in liquidation, other than as expressly stated in paragraph two of this subsection.

(1) (A) The mutual life insurer's participating business comprised of its participating policies and contracts in force on the effective date of reorganization shall be operated by the reorganized insurer as a closed block of participating business in accordance with paragraph five of this subsection except that, at the option of the mutual life insurer, some or all classes of group policies and contracts may be excluded from the closed block of participating business and in such event such group policies and contracts shall continue to be eligible to receive dividends based on the experience of such class or classes; (B) subject to the provisions of subparagraph (D) of this paragraph, the plan of reorganization provides that the policyholders' membership interest will be exchanged for all of the common shares of the reorganized insurer or its parent company, if any, or for either, or a combination of (i) the common shares of the reorganized insurer or its

parent company, if any, and (ii) consideration equal to the proceeds of the public sale in the market of such common shares by the issuer thereof or by a trust or other entity existing for the exclusive benefit of the policyholders and established solely for the purpose of effecting the reorganization to which such common shares are issued by the issuer on the effective date of reorganization, such consideration to be distributed to policyholders during a process of reorganization specified in the plan and not to last more than ten years after the effective date of reorganization or until notification of the death of a policyholder or the death of the insured, whichever occurs first; (C) the consideration to be given to the policyholders is allocated among the policyholders in a manner which is fair and equitable to policyholders and which may take into account the estimated proportionate contribution of each class of participating policies and contracts to the aggregate consideration being given to policyholders; (D) unless such issuance within a shorter or longer period is disclosed in the plan of reorganization, the issuer of such common shares has not issued and does not issue within two years of the effective date of the reorganization (i) any of its common shares, (ii) any securities convertible, with or without consideration, into such common shares or carrying any warrant or right to subscribe to or to purchase common shares, or (iii) any warrants or rights to subscribe to or purchase such common shares or other securities described in item (ii) of this subparagraph, except for the issue of common shares to or for the benefit of the policyholders pursuant to the reorganization and the issue of stock in anticipation of options for the purchase of common shares being granted to officers or employees of the reorganized insurer or its holding company, if any, pursuant to this chapter and a plan

approved by the superintendent; (E) the issuer shall use its best efforts to encourage and assist in the establishment of a public market for such common shares within two years of the effective date of the reorganization (or such longer period as may be disclosed in the plan or reorganization); (F) within one year after the offering of stock other than the initial distribution, but no later than six years after the effective date of the reorganization the insurer, under a plan approved by the superintendent, which he finds not to be harmful to the reorganized insurer, shall offer to make available to policyholders who received and retained shares of stock with minimal values on reorganization, a procedure to dispose of those shares of stock at market value without brokerage commissions or similar fees; and (G) the costs and expenses of the reorganization shall be borne by the insurer but no costs and expenses incurred in any manner in connection with the reorganization shall be charged to the closed block.

(2) (A) The mutual life insurer's participating business comprised of its participating policies and contracts in force on the effective date of the reorganization shall be operated by the reorganized insurer as a closed block of participating business in accordance with paragraph five of this subsection except that, at the option of the mutual life insurer some or all classes of group policies and contracts may be excluded from the closed block of participating business and in such event such group policies and contracts shall continue to be eligible to receive dividends based on the experience of such class or classes; (B) the reorganized insurer or its parent corporation is to issue and sell shares of one or more classes of stock having a total offering price equal to the estimated value in the

public market of the mutual life insurer; (C) the policyholders' equity is equal to the excess of (i) the amount of the mutual insurer's assets accumulated from the operations of participating policies and contracts in force on the effective date of the reorganization, over the sum of (ii) the amount of assets allocated to the closed block of participating business and (iii) an amount equal to the statutory reserves and other statutory liabilities attributable to any group participating policies and contracts in force on the effective date of reorganization and not included in the closed block of participating business, provided however, that the policyholders' equity cannot be less than the amount of the policyholders' preference account. The amount of the policyholders' equity shall be determined as of the statement date and adjusted by the estimated percentage change in the mutual insurer's total assets, as reported in its statutory statements, between the statement date and the effective date of the reorganization. Any determination of policyholders' equity shall include adjustments for any events or matters deemed by the superintendent appropriate, which have a material effect on policyholders' equity and occurred within seven years prior to the statement date; (D) the plan of reorganization provides that the policyholders' membership interest will be exchanged for consideration equal to (i) the policyholders' equity, (ii) nontransferable preemptive subscription rights to purchase all of the shares of such issuer, (iii) ten percent of the proceeds net of underwriting commissions and fees raised by the insurer upon the sale of its initial offering of shares, and (iv) the establishment of a policyholders' preference account for the benefit of policyholders existing on the effective date of reorganization, and for the benefit of the future policyholders of the reorganized insurer, in the event of a subsequent complete liquidation

of the reorganized insurer, such policyholders' preference account having the terms described below in this paragraph; (E) the consideration to be given to the policyholders is allocated among the policyholders in a manner which is fair and equitable to policyholders and which may take into account the estimated proportionate contribution of each class of participating policies and contracts to the aggregate consideration being given to policyholders; (F) at the option of the mutual life insurer, any common shares of the reorganized insurer or its parent company, if any, included in the policyholders' consideration, other than those acquired as a result of a policyholder exercising any preemptive subscription rights, may be placed in a trust or other entity existing for the exclusive benefit of the policyholders and established solely for the purpose of effecting the reorganization to which such common shares are issued by the issuer on the effective date of reorganization, such consideration or the proceeds of the sale of such consideration to be distributed to policyholders during a process specified in the plan and not to last more than ten years after the effective date of reorganization or until notification of the death of the policyholder or the death of the insured, whichever occurs first; (G) the issuer shall use its best efforts to encourage and assist in the establishment of a public market for such common shares within two years of the effective date of the reorganization; (H) within one year after the offering of stock other than the initial distribution, but no later than six years after the effective date of the reorganization the insurer, under a plan approved by the superintendent which he finds not to be harmful to the reorganized insurer, shall offer to make available to policyholders who received and retained shares of stock with minimal values on reorganization, including but limited to shares acquired by policyholders

exercising their preemptive subscription rights, a procedure to dispose of those shares of stock at market value without brokerage commissions or similar fees; (I) the costs and expenses of the reorganization shall be borne by the insurer, however if the reorganization is effected, no costs and expenses incurred in any manner in connection with the reorganization shall be charged to the participating business in force on the effective date of reorganization. Costs and expenses shall include but not be limited to legal fees, appraisal fees, printing and/or mailing costs; (J) notwithstanding subparagraph (I) of this paragraph, if the plan of reorganization provides for or permits a person to directly or indirectly acquire in any manner the beneficial ownership of five percent or more of the voting securities of such reorganized insurer or of any institution which owns a majority or all of the voting securities of the reorganized insurer, or if the superintendent determines that a person will control, as defined in paragraph sixteen of subsection (a) of section one hundred seven of this chapter, such reorganized insurer or any institution which owns a majority or all of the voting securities of the reorganized insurer then, unless the superintendent determines that it is in the policyholders' interest to waive all or part of this condition, the mutual life insurer shall not, directly or indirectly, pay for any of the costs or expenses of a proposed reorganization whether or not such reorganization is effected and in no event shall any of the costs and expenses incurred in any manner in connection with the reorganization be charged to the participating business in force on the effective date of reorganization. Costs and expenses shall include but not be limited to legal fees, appraisal fees, printing and/or mailing costs; (K) the policyholders' preference account referred to above shall be equal to the excess of the amount of the mutual

insurer's total admitted assets over the sum of (i) the total amount of assets allocated to the closed block of participating business and (ii) the policyholders' equity and (iii) statutory reserves and liabilities attributed to policies and contracts not included in the closed block of participating business. The policyholders' preference account shall be calculated as of the statement date and adjusted appropriately to reflect any changes in the components used in determining the amount of the policyholders' preference account between the statement date and the effective date of reorganization; (L) a mutual life insurer whose policyholders' equity is paid in the form of stock may show, as a write-in item labeled "Reorganization surplus" immediately following "Capital paid up" on the annual statement of the reorganized insurer, a negative amount equal to the excess of the policyholders' equity which was paid in the form of stock over its unassigned surplus on the date of reorganization; and (M) the policyholders' preference account shall be so designated and shown as a footnote to the surplus of the reorganized insurer in all of its published and filed statements. In the event of a subsequent complete liquidation of the reorganized insurer, and only in such event, the policyholders' preference account shall be allocated among the then policyholders in a manner found by the superintendent to be fair and equitable to policyholders, first to policyholders having participating policies and contracts in force on the effective date of the reorganization and then to all other policyholders of the reorganized insurer. The function of the policyholders' preference account shall be solely to establish a priority on liquidation and its existence shall not operate to restrict the use or application of the surplus of the reorganized insurer except that the reorganized insurer, after complying with all other requirements of this chapter, cannot

declare or pay a cash dividend on, or repurchase any of, its shares if, after such declaration or payment the amount of net preference assets of the reorganized insurer is less than the amount of the policyholders' preference account. For this purpose, the net preference assets shall be equal to the insurer's total admitted assets less the sum of (i) the assets in the closed block of participating business (ii) the statutory reserves and liabilities with respect to business not in such closed block and (iii) the reorganized insurer's capital and paid in surplus.

(3) (A) The mutual life insurer's participating business comprised of its participating policies and contracts in force on the effective date of the reorganization shall be operated by the reorganized insurer as a closed block of participating business, for policyholder dividend purposes only, to which shall be allocated admitted assets of the mutual life insurer in an amount equal to the statutory reserves and statutory liabilities of the mutual life insurer; (B) the consideration to be given in exchange for the policyholders' membership interest shall be equal to the statutory surplus of the mutual life insurer; (C) the amount of statutory reserves and statutory liabilities and statutory surplus shall be determined as of the statement date and adjusted by the estimated percentage change in the mutual insurer's total admitted assets between the statement date and the effective date of reorganization. Any determination of statutory surplus shall include adjustments for any events or matters deemed by the superintendent appropriate, which have a material effect on policyholders' consideration and occurred within seven years prior to the statement date; (D) the consideration shall be allocated among the policyholders in a manner which is fair and equitable to the policyholders and which

may take into account the estimated proportionate contribution of each class of participating policies and contracts to the aggregate consideration being given to policyholders; (E) the reorganized insurer – or its parent corporation is to issue and sell shares of one or more classes of stock having a total offering price equal to the estimated value in the market of the mutual life insurer; (F) the costs and expenses of the reorganization shall be borne by the insurer; however, if the plan of reorganization provides for or permits a person to directly or indirectly acquire in any manner the beneficial ownership of five percent or more of any class of a voting security of such reorganized insurer or of any institution which owns a majority or all of the voting securities of the reorganized insurer, or if the superintendent determines that a person will control, as defined in paragraph sixteen of subsection (a) of section one hundred seven of this chapter, such reorganized insurer or any institution which owns a majority or all of the voting securities of the reorganized insurer then, unless the superintendent determines that it is in the policyholders' interest to waive all or part of this condition, the mutual life insurer shall not, directly or indirectly, pay for any of the costs or expenses of a proposed reorganization whether or not such reorganization is effected. Costs and expenses shall include but not be limited to legal fees, appraisal fees, printing and/or mailing costs; and (G) none of the assets, including the revenue therefrom, allocated in accordance with subparagraph (A) of this paragraph shall revert to the benefit of the stockholders of the reorganized insurer.

(4) (A) Any method approved by the superintendent under which the policyholders' membership interest is converted into or exchanged for consideration determined

by the superintendent to be fair and equitable to policyholders and meeting the requirements of this section; (B) the consideration to be given to the policyholders is allocated among the policyholders in a manner which is fair and equitable; (C) unless the superintendent determines that it is in the policyholders' interest to waive all or part of this condition, the mutual life insurer does not, directly or indirectly, pay for any of the costs or expenses of a proposed reorganization whether or not such reorganization is effected. Costs and expenses shall include but not be limited to legal fees, appraisal fees, printing and/or mailing costs; and (D) in determining whether any reorganization is fair and equitable, the superintendent shall be guided by the legitimate economic interests of participating policyholders as delineated in this section.

(5) (A) When the mutual life insurer's participating business comprised of its participating policies and contracts in force on the effective date of the reorganization shall be operated by the reorganized insurer as a closed block of participating business in accordance with paragraphs one and two of this subsection, then it shall be so operated for the exclusive benefit of such policies and contracts included therein, for policyholder dividend purposes only; (B) to such closed block shall be allocated assets of the mutual life insurer in an amount which together with anticipated revenue from such business is reasonably expected to be sufficient to support such business including, but not limited to, provisions for payment of claims, expenses and taxes, and to provide for continuation of current payable dividends scales, if the experience underlying such scales continues and for appropriate adjustments in such scales if the experience

changes; (C) the amount of such assets shall be determined as of the statement date and brought forward to the effective date of the reorganization using methods which would have been used had the closed block been established on the statement date with appropriate recognition of new issues; and (D) none of the assets, including the revenue therefrom, allocated in accordance with subparagraph (B) of this paragraph shall revert to the benefit of the stockholders of the reorganized insurer.

(6) If any amount of the policyholders' consideration for certain classes of policies or contracts is to be paid in the form of increased annual dividends to the policyholders in those classes, that amount is to be added to the assets previously allocated in accordance with paragraph three or five of this subsection and is to be paid out to those classes in a fair and equitable manner.

(e) Adoption of plan of reorganization. (1) A mutual life insurer seeking to reorganize under this section shall, by action of three-fourths of its entire board of directors. adopt a plan consistent with the provisions of this section and that it finds is fair and equitable to the policyholders. The board of directors of the mutual life insurer, in selecting one of the methods described in subsection (d) of this section, shall set forth the basis for their selection. The plan of reorganization shall set forth (A) a demonstration for the purpose for the proposed reorganization; (B) the form of the reorganization; (C) the proposed charter of the reorganized insurer set out in accordance with section one thousand two hundred one of this chapter and its proposed by-laws which shall provide for the removal of the word "mutual" from the name of the company; (D) the manner and basis by which the reorganization shall take place; (E) the consideration to be given to the policyholders in

exchange for their policyholders' membership interest or the manner of converting the policyholders' membership interest into securities or other consideration; (F) the method of allocating the consideration among policyholders; (G) the method of operation of the mutual life insurer's participating business comprised of its participating policies and contracts in force on the effective date of the reorganization; and (H) a plan of operation for the reorganized insurer including actuarial projections for a ten-year period and a statement indicating its intentions with regard to issuing any nonparticipating business. If the reorganized insurer proposes to continue to issue for delivery in this state participating policies or contracts, the plan of reorganization shall so specify. In such event, upon the superintendent's approval of the plan of reorganization pursuant to this section, the superintendent shall, in accordance with section four thousand two hundred thirty-one of this chapter, issue a revocable permit to the reorganized insurer authorizing it to issue participating policies and contracts in this state. The plan of reorganization may contain any other conditions and provisions which the board of directors of the mutual life insurer may deem necessary or advisable in connection with the proposed reorganization.

(2) The consideration to be given in exchange for the policyholders' membership interest or into which such membership interest is to be converted may consist of cash, securities of the reorganized insurer or securities of another institution or institutions, a certificate of contribution, additional life insurance or annuity benefits, increased dividends or other consideration or any combination of such forms of consideration. The consideration, if any, given to any class or category of policyholder need not

be the same as the consideration given to any other class or category of policyholder. The certificate of contribution referred to above shall be repayable in five years and bear annual interest at the published monthly average, as defined in section three thousand two hundred six of this chapter, for the calendar month ending two months before the effective date of reorganization.

(3) The policyholders who shall be entitled to notice of and to vote upon the proposal to approve the plan of reorganization and to notice of the public hearing required by this section shall be the policyholders whose policies or contracts are in force on the date of adoption of the plan of reorganization. Each such policyholder whose policy has been in force on such date shall be entitled to the consideration, if any, provided for such policyholder in the plan based on such policyholder's membership interest determined pursuant to this section but only to the extent that such policyholder's membership interest arose from policies or contracts that shall be in force on the date of adoption of the plan.

(4) Upon adoption of the plan of reorganization, it shall be duly executed by the chairman of the board, the president or a vice president and attested by the secretary or an assistant secretary of the mutual life insurer under such insurer's corporate seal and shall be submitted to the superintendent with a copy of the resolutions adopting such plan and finding that it is fair and equitable to the policyholders, accompanied by a certificate of adoption of such resolutions subscribed by such officers and affirmed by them as true under penalties of perjury and under the seal of the mutual life insurer.

(f) Amendment or withdrawal of plan. The mutual life insurer may, by action of a majority of the entire board of directors, at any time before the plan of reorganization becomes effective as provided by this section (1) amend the plan of reorganization; or (2) withdraw the plan of reorganization. On adoption of an amendment it shall be duly executed by the chairman of the board, the president or a vice president and attested by the secretary or an assistant secretary of the mutual life insurer under such insurer's corporate seal and shall be submitted to the superintendent with a copy of the resolutions adopting such amendments subscribed by such officers and affirmed by them as true under penalties of perjury and under the seal of the mutual life insurer. In case of an amendment, all references in this section to the plan of reorganization shall be deemed to refer to the plan as amended. No amendment made after any public hearing required by this section or after approval by the policyholders as provided in this section shall change the plan in a manner which the superintendent determines is materially disadvantageous to any of the policyholders unless a further public hearing is held on the plan as amended if the amendment is made after the public hearing, or the plan as amended is submitted for reconsideration by the policyholders if the amendment is made after the plan has been approved by the policyholders, under the conditions and procedures determined by the superintendent in accordance with this section.

(g) Additional information. Upon submission to him of the plan of reorganization. the superintendent may request any additional documents or information and may examine the mutual life insurer or any of its affiliates, to the extent he may determine to be necessary to enable him

to make the findings required by this section for the approval by him of the plan of reorganization. If the reorganized insurer proposes to continue to issue for delivery in this state participating policies or contracts, the superintendent may also request such information or agreements relative thereto as he may require pursuant to section four thousand two hundred thirty-one of this chapter.

(h) Consultants and certifications. (1) The superintendent may appoint one or more qualified disinterested persons or institutions as consultants to advise him on any matters related to the reorganization. The appointment of a consultant shall be in writing and shall set forth the duties and responsibilities of the consultant. Copies of such appointment shall be given to the consultant and concurrently to the mutual life insurer.

(2) if the plan of reorganization satisfies the conditions set forth in paragraph one or two of subsection (d) of this section, the superintendent shall appoint one or more qualified and disinterested actuaries for the purpose specified in paragraph three of this subsection. Such actuary shall be a member of the American Academy of Actuaries, and shall be knowledgeable and experienced as to the matters to be certified.

(3) Such actuary shall certify in writing as to (A) in the case of a plan of reorganization pursuant to paragraph two of subsection (d) of this section, the amount of the mutual insurer's assets accumulated from the operations of participating policies and contracts in force on the effective date of the reorganization and (B) in the case of a plan of reorganization pursuant to paragraphs one or two of subsection (d) of this section, the reasonableness and

sufficiency of the asset allocation referred to in subparagraph (B) of paragraph five of subsection (d) of this section. Such certification shall be in form satisfactory to the superintendent and shall be made in accordance with professional standards and practices generally accepted by the actuarial profession and such other factors as such actuary in his professional judgment believes are reasonable and appropriate at the time such certification is made. Any such certification shall be accompanied by a memorandum of the actuary, in form satisfactory to the superintendent, describing the calculations made in support of such certification and the assumptions used in such calculations.

(4) The consultant and the actuary may request of the mutual life insurer access to its books and records and the furnishing by it of any other information in its possession, to the extent it may reasonably be deemed necessary to make the valuations and certifications contemplated by this subsection, or to advise the superintendent on any matters related to the reorganization. The consultant and the actuary shall report to the superintendent any instance in which the mutual life insurer fails to provide any information requested by them. The consultant and the actuary shall not, under judicial process or otherwise, be obligated or permitted to divulge to any one except the superintendent any information not otherwise publicly available which is so obtained by them. The consultant and the actuary shall receive reasonable compensation and shall be reimbursed for reasonable expenses incurred in performing their duties.

(5) The report of the consultant and the certification of the actuary shall be made to the superintendent. In making the determinations contemplated by this section,

the superintendent shall not be bound by any findings, conclusions, certifications or recommendations made by the consultant or the actuary. All information obtained by the superintendent pursuant to this section, including without limitation information obtained through examinations by him, the report of the consultant, the certification of the actuary, the memorandum of the actuary and other information secured by the consultant or the actuary and turned over to the superintendent, are hereby specifically exempted, as contemplated by paragraph (a) of subdivision two of section eighty-seven of the public officers law, from disclosure by the superintendent under said section eighty-seven of such law. Such exemption shall not preclude or exempt the superintendent from disclosure of such information pursuant to judicial process under provisions of law other than said section eighty-seven of the public officers law, nor prohibit any disclosure which in the opinion of the superintendent, and after an opportunity for the insurer to be heard, the superintendent deems should be made public for the benefit of the insurer, its policyholders or the public. If the department intends to make any report or certification public, then such report or certification shall be made available to the company at least fifteen days prior to such public disclosure.

(6) Nothing contained in this section shall be construed to exclude any person or employee or member of an institution from the category of "disinterested person" solely because such individual is a policyholder of the insurer or that such person or institution is to be one of the underwriters of any shares to be sold pursuant to the plan of reorganization.

(i) Public hearing. The superintendent shall hold a public hearing upon the fairness of the terms and

conditions of the plan of reorganization, the reasons and purposes for the mutual life insurer to demutualize, and whether the reorganization is in the interest of the mutual life insurer and its policyholders, and not detrimental to the public. Notice stating the time, place and purpose of the hearing shall be mailed by the mutual life insurer to each policyholder entitled to notice of the hearing in accordance with paragraph three of subsection (e) of this section, at his last known address as shown on the records of the mutual life insurer; such notice shall be mailed at least thirty days before the date of the hearing. Such notice shall be preceded or accompanied by a true and complete copy of the plan, or by a summary thereof approved by the superintendent, and such other explanatory information as the superintendent shall approve or require. In addition, the mutual life insurer shall give notice of the time, place and purpose of the hearing by publication in three newspapers of general circulation, one in the county in which the insurer has its principal office and two in other cities within or without this state approved by the superintendent. Such newspaper publications shall be made not less than fifteen days nor more than sixty days before the hearing, and shall be in a form approved by the superintendent.

(j) Approval of plan by superintendent. The superintendent shall after the public hearing required by subsection (1) of this section approve the plan of reorganization if he finds that the proposed reorganization, in whole and in part, does not violate this chapter, is fair and equitable to the policyholders and is not detrimental to the public and that, after giving effect to the reorganization, the reorganized insurer will have an amount of capital and surplus the superintendent deems to be reasonably necessary for

its future solvency. If approval is denied, the denial shall be in writing setting forth a statement of the reasons therefor and the mutual life insurer shall have the right to a hearing before the superintendent within thirty days of the date of such denial. The superintendent shall not disapprove of a plan of reorganization for the reason that the mutual life insurer selected one of the methods provided for in subsection (d) of this section rather than another. The superintendent shall approve or disapprove the plan in writing on or before sixty days after the conclusion of the public hearing required by subsection (1) of this section.

(k) Approval by policyholders. (1) A proposal to approve the plan of reorganization shall be submitted to policyholders. Notice stating the date, time and place for voting on such proposal shall be mailed by the mutual life insurer to each policyholder entitled to notice of and to vote on the proposal in accordance with paragraph three of subsection (e) of this section, at his last known address as shown on the records of the mutual life insurer; such notice shall be mailed at least thirty days before the date of the action. Such notice may be combined with notice of the public hearing required by this section. Such notice shall be preceded or accompanied by a true and complete copy of the plan, or by a summary thereof approved by the superintendent, and such other explanatory information as the superintendent shall approve or require.

(2) Each policyholder entitled to vote on the proposal shall be entitled to cast one vote, unless otherwise provided in the charter or by-laws of the mutual life insurer, on the proposal, either in person or by mail or by proxy, irrespective of the number or amount of the policies or contracts he holds. Any proxy shall be revocable at any

time except to the extent that, at the time of exercise, the power conferred thereby has been exercised. All votes shall be by written ballot cast in person or by mail by policyholders entitled to vote or by proxy agents duly appointed by policyholders entitled to vote. The voting on the proposal shall be held at the home office of the mutual life insurer. The polls shall be opened at ten o'clock in the forenoon and remain open until four o'clock in the afternoon of the day fixed for such voting, at which time they shall be closed. The proposal to approve the plan of reorganization may be adopted by the affirmative vote of two-thirds of all votes cast by policyholders entitled to vote.

(3) The superintendent shall have power to supervise and direct and prescribe rules governing the procedure for the conduct of the voting on the proposal to such extent, consistent with the provisions of this section, as he deems necessary to insure a fair and accurate vote. Such powers shall include, but not be limited to, power to supervise and regulate (A) the determination of policyholders entitled to notice of and to vote on the proposal; (B) the giving of notice of the proposal; (C) the receipt, custody, safeguarding, verification and tabulation of proxy forms and ballots; and (D) the resolution of disputes.

(4) The superintendent shall appoint as inspectors an adequate number of personnel of the insurance department or other competent and disinterested persons and may appoint, if necessary, expert accountants and other assistants and may authorize the procurement of stationery and supplies necessary for conducting the voting on the proposal and canvassing the votes. The inspectors shall have power to determine all questions concerning the verification of the ballots and proxies, the ascertainment of the validity thereof, the qualifications of

the voters and the canvass of the vote, and with respect thereto shall act under such rules as shall be prescribed by the superintendent. Any disagreement among the inspectors shall be reported to and shall be resolved by the superintendent. Any determinations by the inspectors or the superintendent shall be subject to judicial review.

(5) Representatives of the policyholders, including representatives of policyholders favoring or opposing the approval of the plan, shall be entitled to be present during the casting, verification and canvassing of the proxies and ballots and shall be entitled to examine and object to any such proxy or ballot. The superintendent or the inspectors may limit the number of persons representing any interested person or group and may specify fair and reasonable procedures for the examination of and presentation of objections to the proxies and ballots. Costs and expenses incurred in providing such representation shall not be a charge upon or paid from the funds of the mutual life insurer or the person responsible for the costs and expenses of the reorganization.

(6) Neither the mutual life insurer nor any officer, agent or employee thereof shall knowingly omit, from any list of policyholders entitled to notice of and to vote on the proposal, the name of any policyholder required to be included therein, or shall, in connection with any such list, knowingly omit to give the name and address, as last shown on the records of the mutual life insurer, of any policyholder. No person shall conceal or withhold or aid or abet any other person in concealing or withholding any proxy or ballot from the authorized custodians thereof or from the inspectors. No policyholder shall sell or offer to sell any vote or proxy for any sum of money or anything of

value other than the consideration provided for in the plan or reorganization if such plan becomes effective.

(7) All ballots and proxies received by the inspectors shall immediately upon the completion of the canvass be placed in sealed packages and shall be preserved by the inspectors for a period of four years, subject to the order of any court having jurisdiction of any proceedings relating thereto, and then shall be turned over to the mutual life insurer, or the reorganized insurer if the reorganization has become effective.

(8) The conduct of the voting on the proposal shall at all times, on petition of the superintendent or of any person or persons whose rights may be affected, be subject to the supervision and control of the supreme court in the judicial district in which the mutual life insurer has its home office.

(9) The inclusion by the mutual life insurer of the name of any person in any list of policyholders required by this section shall not be construed as an admission by such insurer of the validity of any policy or contract and no such list shall be competent evidence against such insurer in any action or proceeding in which the question of the validity of any policy or contract or of any claim under it is involved.

(10) The provisions of section four thousand two hundred ten of this chapter shall not apply to the action by policyholders pursuant to this section.

(11) Upon the conclusion of the vote, the mutual life insurer shall submit to the superintendent (A) a certified copy of the plan of reorganization, subscribed by the chairman of the board, the president or any vice president

and attested by the secretary or an assistant secretary of the mutual life insurer; (B) a certificate, subscribed by the chairman of the board, the president or any vice president and attested by the secretary or assistant secretary of the mutual life insurer, or subscribed by the person or persons, if any, designated by the superintendent to supervise the giving of notice of the date for action on the proposal, to the effect that such notice was given in accordance with this section to all policyholders entitled to such notice; and (C) a certificate subscribed by the inspectors of the results of the vote, as evidenced by valid ballots received before the polls were closed. Each such certificate shall be affirmed as true under the penalties of perjury by the person or persons subscribing the same and, in the case of a certificate signed by officers of the mutual life insurer, shall be affirmed under the corporate seal of the mutual life insurer.

(l) Effective date of reorganization. When the superintendent has given his approval of the plan of reorganization as provided in subsection (j) of this section and certification of approval of the plan has been made to the superintendent as provided in subsection (k) of this section, a copy of the plan of reorganization, with the superintendent's approval endorsed thereon, shall be filed in the office of the superintendent. A copy of such plan certified by the superintendent shall also be filed by the mutual life insurer in the office of the clerk of the county where the principal office of the mutual life insurer is located. The plan of reorganization shall take effect in accordance with its terms on the date when the filings required by this subsection have been made or on such later date, if any, as may have been specified in or determined in accordance with said plan or pursuant thereto.

The superintendent shall issue an amended certificate of authority to the reorganized insurer and such license, if any, as may be required under section one thousand two hundred four of this chapter for the sale of its securities as specified in its plan of reorganization.

(m) Corporate existence. Upon the reorganization of the mutual life insurer in the manner herein provided, the reorganized insurer shall be deemed a continuation of the corporate existence of the mutual life insurer or, in the case of a merger, of the company specified in the plan of reorganization as the continuing company, which may be either the mutual life insurer or the domestic stock life insurer with which it is merged. All the rights, franchises and interests of the mutual life insurer and, in the case of a merger, of the domestic stock insurer, in and to every species of property, real, personal and mixed, and things in action thereunto belonging, shall be deemed transferred to and vested in the continuing company, without any other deed or transfer; and simultaneously therewith such continuing company shall be deemed to have assumed all of the obligations and liabilities of the mutual life insurer and, in the case of a merger, of the domestic stock insurer, other than obligations and liabilities with respect to the policyholders' membership interest eliminated by the plan of reorganization.

(n) Actions and proceedings. No action or proceeding pending at the time of the reorganization to which the mutual life insurer may be a party shall be abated or discontinued by reason of such reorganization, but the same may be prosecuted to final judgment in the same manner as if the reorganization had not taken place, or the reorganized insurer may be substituted in place of

such mutual life insurer by order of the court in which the action or proceeding may be pending.

(o) Directors and officers. The directors and officers of the mutual life insurer, unless otherwise specified in the plan of reorganization, shall serve as directors and officers of the reorganized insurer until new directors and officers have been duly elected and qualified pursuant to the charter and by-laws of the reorganized insurer.

(p) Costs and expenses. (1) The mutual life insurer shall deliver to the superintendent at the time of submission of the plan of reorganization a written undertaking in form and substance satisfactory to the superintendent and signed by the mutual life insurer, and by such other persons as the superintendent may require, specifying the manner in which all costs and expenses incurred in any manner in connection with the plan of reorganization shall be paid or reimbursed. Such undertaking shall provide for the payment or reimbursement of all expenses incurred by the superintendent or the department in connection with the plan of reorganization, other than normal operating expenses of the department.

(2) Such undertaking, other than a reorganization pursuant to paragraph one of subsection (d) of this section, shall also provide that no payment of costs and expenses by the mutual life insurer or the reorganized insurer shall, after giving effect to any reimbursement or contribution received by such insurer with respect thereto, have the effect of reducing the consideration, other than the policyholders' preference account referred to in paragraph two of subsection (d) of this section, to be paid to the policyholders pursuant to the plan of reorganization. The requirements of this paragraph may be waived in a reorganization

pursuant to paragraphs three and four of subsection (d) of this section if the superintendent determines that it is in the policyholders' interest to do so.

(3) The said undertaking shall apply to costs and expenses incurred prior to the submission of the plan of reorganization as well as those incurred thereafter and shall be binding whether or not the plan of reorganization takes effect. The consideration to be given to policyholders pursuant to the plan shall not be deemed a cost or expense of the reorganization subject to this subsection nor to such undertaking.

(q) Notice of proposed reorganization. Notice of the pendency of the proposed reorganization and of the effect thereof shall be given by the mutual life insurer in a manner satisfactory to the superintendent to all persons to whom the mutual life insurer delivers policies or contracts which are issued after the date on which the plan of reorganization is adopted by the mutual life insurer and before the plan takes effect or is withdrawn. Such persons shall have the right, unless the laws of their domiciliary state gives other rights, to rescind such policies or contracts, and to be refunded any amounts paid with respect thereto, by written notice to such insurer or its agent given within ten days of their receipt of the aforesaid notice given by such insurer.

(r) Effect of reorganization. If the plan of reorganization takes effect, the rights of all policyholders thereafter shall be as specified in their policies or contracts, in the charter of the reorganized insurer and in the plan of reorganization, except for elimination of the right to vote, if any, and they shall have no rights under the charter of the mutual life insurer. The reorganized insurer shall

thereafter be subject to all laws, rules and regulations applicable to domestic stock life insurers and shall not be subject to any laws, rules or regulations of this state applicable to domestic mutual insurers and not to domestic stock life insurers.

(s) Failure to give notice. If the mutual life insurer complies substantially and in good faith with the requirements of this section with respect to the giving of any required notice to policyholders, its failure in any case to give such notice to any person or persons entitled thereto shall not impair the validity of the actions and proceedings taken under this section or entitle such person to any injunctive or other equitable relief with respect thereto, but this subsection shall not impair any claim for damage such person or persons would otherwise have due to such failure.

(t) Limitation of actions; security. (1) Any action challenging the validity of or arising out of acts taken or proposed to be taken under this section must be commenced within one year after a copy of the plan of reorganization, with the superintendent's approval endorsed thereon, shall be filed in the office of the superintendent or six months from the effective date of the reorganization, whichever is later, or if the plan of reorganization is withdrawn, within six months of such withdrawal.

(2) In any action arising out of acts taken or proposed to be taken under this section, the mutual life insurer of the reorganized insurer shall be entitled at any stage of the proceedings before final judgment to petition the court to require plaintiff or plaintiffs to give security for the reasonable expenses, including attorney's fees, which may be incurred by it in connection with such action

and by any other parties defendant in connection therewith or for which the mutual life insurer or the reorganized insurer may become liable under this chapter, under any contract or otherwise by law, to which security the mutual life insurer or the reorganized insurer shall have recourse in such amount as the court having jurisdiction of such action shall determine upon the termination of such action. The amount of security may thereafter from time to time be increased or decreased in the discretion of the court having jurisdiction of such action upon showing that the security provided has or may become inadequate or excessive.

[*(3) Repealed*]

[*(4) Repealed*]

(u) Modification or exchange of existing policies. Nothing in this section shall preclude either the mutual life insurer or the reorganized insurer, on compliance with all applicable requirements of this chapter, from offering at any time or from time to time any class or category of policyholders to modify their policies or contracts or to exchange their policies or contracts for other policies or contracts in the manner set forth in the offer.

(v) Prohibitions on certain offers to acquire and acquisitions of shares. Prior to, and for a period of five years following the date when the distribution of consideration to the policyholders in exchange for their membership interests is completed pursuant to such plan of reorganization, no person, other than the reorganized insurer or an institution referred to in subsection (b) of this section that is a part of the plan of reorganization as provided by said subsection (b) or an institution that is

formed, with the approval of the superintendent, subsequent to the effective date of the reorganization in order to acquire all of the common shares of the reorganized insurer in a transaction where holders of common shares of the reorganized insurer receive all of the common shares of such institution on a basis that is proportionate to the number of common shares of the reorganized insurer held by each such holder, shall directly or indirectly offer to acquire or acquire in any manner the beneficial ownership of five percent or more of any class of a voting security of such reorganized insurer or of any institution which owns a majority or all of the voting securities of the reorganized insurer, without the prior approval of the superintendent. In the event of any violation of this subsection, or of any action which, if consummated, might constitute such a violation, (1) all voting securities of the reorganized insurer or of such institution acquired by any person in excess of the maximum amount permitted to be acquired by such person pursuant to this subsection shall be deemed to be non-voting securities of the reorganized insurer or of such institution, as the case may be, and (2) such violation or action may be enforced or enjoined, as the case may be, by appropriate proceeding commenced by the reorganized insurer, such institution or the superintendent, the attorney general or any policyholder or stockholder of the reorganized insurer or such institution on behalf of the reorganized insurer or such institution in the supreme court in the judicial district in which the reorganized insurer has its home office or in any other court having jurisdiction, and such court may issue any order, injunctive or otherwise, it finds necessary to cure such violation or to prevent such action. For the purposes of this subsection, the term "beneficial ownership", with respect to any security, means the sale or shared power to

vote, or direct the voting of, such security and/or the sole or shared power to dispose, or direct the disposition, of such security; the term "voting security" includes voting securities as defined in paragraph forty-five of subsection (a) of section one hundred seven of this chapter, any pre-reorganization certificate or subscription (including subscription rights issued pursuant to a plan of reorganization), or any security convertible (with or without consideration) into any such security, or carrying any warrant or right to subscribe for or purchase any such security, or any such warrant or right; the term "offer" includes every offer to buy or acquire, solicitation of an offer to sell, tender offer for, or request or invitation for tenders of, a security or interest in a security for value; and the term "person" means an individual, group, firm, corporation, partnership, association, joint stock company, trust, any similar entity or any combination of the foregoing acting in concert.

(w) Prohibited transactions by officers, directors or employees. (1) Prior to, and for a period of five years following the date when the distribution of consideration to the policyholders in exchange for their membership interests is completed pursuant to such plan of reorganization, no officer, director or employee of the mutual insurer or of the reorganized insurer, including family members and their spouses, shall directly or indirectly offer to acquire or shall acquire in any manner the beneficial ownership of any securities of the reorganized insurer or of the institution referred to in subsection (b) of this section unless the acquisition is (A) made pursuant to a stock option plan approved by the superintendent; (B) made pursuant to the plan of reorganization; (C) made by employees, including their family members and their

spouses, from a broker or dealer registered with the Securities and Exchange Commission at the then quoted prices on the date of purchase; or (D) made by officers or directors, including their family members and their spouses, at least two years after the initial public offering from a broker or dealer registered with the Securities and Exchange Commission at the then quoted prices on the date of purchase.

(2) For purposes of this subsection, the term "beneficial ownership", with respect to any security, means the sole or shared power to vote, or direct the voting of, such security and/or the sole or shared power to dispose, or direct the disposition, of such security.

(3) For purposes of this subsection, the term "securities", includes voting securities as defined in section one hundred seven of this chapter, any pre-reorganization certificate or subscription (including subscription rights issued pursuant to a plan of reorganization), or any security convertible (with or without consideration), into any such security, or carrying any warrant or right to subscribe for or purchase any such security, or any such warrant or right.

(4) For purposes of this subsection, the term "family member", includes a brother, sister, spouse, ancestor or descendant of the officer, director or employee of the mutual insurer or of the reorganized insurer.

(5) No officer, director or employee shall receive any fee or other consideration, other than regular salary, director fees, or consideration as a policyholder in connection with any proposed reorganization. This paragraph, however, shall not prohibit the mutual life insurer from compensating in cash any firm with which one of its

directors is associated for services rendered in connection with any proposed reorganization.

(x) Effect on department personnel. Notwithstanding subsection (a) of section two hundred four of this chapter, the superintendent, any deputy or other employee of the department shall be permitted to receive and exercise any rights received as a policyholder in connection with a reorganization.

APPENDIX F

In the Matter of the Plan of Reorganization of THE METROPOLITAN LIFE INSURANCE COMPANY from a Mutual Life Insurance Company into a Stock Life Insurance Company	X : : : : : : : : : : X	OPINION AND DECISION

The Metropolitan Life Insurance Company ("MetLife" or the "Company"), a domestic mutual life insurance company, was organized as a stock life insurance company under the laws of New York in 1868 and became a domestic mutual life insurance company in 1915. The Company has been continuously licensed in New York since 1868. MetLife has applied to the New York State Superintendent of Insurance (the "Superintendent") to convert to a domestic stock life insurance company in accordance with the provisions of Section 7312 of the New York Insurance Law ("Section 7312").[1]

[1] Unless otherwise indicated, references or citations in the text of this Opinion and Decision to "Section ___" or "§ ___" are to sections of the New York Insurance Law.

I. Legislative Background and Statutory Requirements

1. Section 7312 was enacted by the New York State Legislature in 1988 to permit domestic mutual life insurance companies to reorganize to stock company form, a process known as demutualization. According to the legislative findings that accompanied the law:

> [I]t is in the interest of the state to maintain a financially sound and competitive life insurance industry in this state and to provide statutory authority for domestic mutual life insurance companies that find it in the best interest of the company and its policyholders to convert to stock form to do so pursuant to this legislation. In doing so, the legislature is cognizant that two separate state-appointed commissions examined, among other things, the issue of conversion from mutual form and both recommended that mutual life insurance companies should be allowed to demutualize. Each recognized that flexibility of corporate form can be an important factor in an environment of rapidly changing economic conditions.

Section 1 of L. 1988, ch. 683; amended L. 1988, ch. 684, § 1 (Sept. 1, 1988), *reprinted in* N.Y. Ins. Law § 7312 note (McKinney Supp. 1999-2000) (legislative findings).

2. To ensure that the new statute was sufficiently flexible, the Legislature authorized several alternate methods of reorganization:

> With the proposal of this legislation, the legislature provides for the demutualization of life insurance companies in accordance with provisions specific enough for the insurer to plan sufficiently for a major reorganization of its corporate form, and standards broad enough to assure the state

> that any such reorganization must be fair and equitable to its policyholders in both substance and detail. In setting forth several detailed methods of conversion, the legislature intends to give guidance to insurers seeking to reorganize by offering three specific conversion methods; by also authorizing any fair and equitable method of reorganization approved by the superintendent of insurance, either completely different from the three specific methods enumerated or any variant thereof, the legislature recognizes the complexity of the process and the need for flexibility.

Id.

3. Regardless of the method of reorganization, the Legislature made plain that the Superintendent should have broad authority to interpret and apply the new law:

> [N]otwithstanding the relative inexperience with life insurance company demutualizations, the legislature hereby recognizes that the state's authority is broad enough, in requiring that any reorganization be fair and equitable, to bring within the scope of its regulatory review and approval any concepts related to demutualization, unanticipated as of the effective date of this legislation, that could materially affect a reorganization.

Id.

4. A domestic mutual life insurance company seeking to reorganize under Section 7312 is required, by action of three-fourths of its entire board of directors, to adopt a plan of reorganization that is consistent with the provisions of the statute and that the board finds to be fair and equitable to the policyholders of the company. § 7312(e)(1).

5. The plan of reorganization must: (1) demonstrate a purpose and specify reasons for the proposed reorganization; (2) be in the best interest of the mutual life insurer and its policyholders; (3) be fair and equitable to policyholders; (4) provide for the enhancement of the operations of the reorganized insurer; and (5) not substantially lessen competition in any line of insurance business. § 7312(c). The plan of reorganization must also set forth: (1) a demonstration of the purpose for the proposed reorganization; (2) the form of the reorganization; (3) the proposed charter of the reorganized insurer set out in accordance with Section 1201 and proposed by-laws which provide for the removal of the word "mutual" from the name of the company; (4) the manner and basis by which the reorganization shall take place; (5) the consideration to be given to the policyholders in exchange for their policyholders' membership interest or the manner of converting the policyholders' membership interest into securities or other consideration; (6) the method of allocating the consideration among policyholders; (7) the method of operation of the participating business of the mutual life insurer comprised of its participating policies and contracts in force on the effective date of the reorganization; and (8) a plan of operation for the reorganized insurer, including actuarial projections for a ten-year period and a statement indicating its intentions with regard to issuing any non-participating business. § 7312(e).

6. Section 7312(d) authorizes four alternate methods of reorganization. Each method of reorganization authorized by paragraphs (1) through (3) of Section 7312(d) has a number of specific provisions. Paragraph (1) of Section 7312(d) ("Method 1") authorizes, among other things, "a trust or other entity existing for the exclusive benefit of

the policyholders and established solely for the purpose of effecting the reorganization," to which the common shares of the reorganized insurer or its parent company are contributed on the effective date of the reorganization and from which the common shares are distributed to policyholders as specified in the plan of reorganization.

7. Paragraph (4) of Section 7312(d) ("Method 4") authorizes:

> (A) Any method approved by the superintendent under which the policyholders' membership interest is converted into or exchanged for consideration determined by the superintendent to be fair and equitable to policyholders and meeting the requirements of this section; (B) the consideration to be given to policyholders is allocated among the policyholders in a manner which is fair and equitable; (C) unless the superintendent determines that it is in the policyholders' interest to waive all or a part of this condition, the mutual life insurer does not, directly or indirectly, pay for any of the costs or expenses of a proposed reorganization whether or not such reorganization is effected. . . . ; and (D) in determining whether any reorganization is fair and equitable, the superintendent shall be guided by the legitimate economic interests of participating policyholders as delineated in this section.

8. Section 7312(e)(2) provides that the consideration to be given in exchange for the policyholders' membership interests may consist of "cash, securities of the reorganized insurer or securities of another institution or institutions, a certificate of contribution, additional life insurance

or annuity benefits, increased dividends or other consideration or any combination of such forms of consideration." Further, Section 7312(e)(2) states that "[t]he consideration, if any, given to any class or category of policyholder need not be the same as the consideration given to any other class or category of policyholder."

9. The policyholders eligible to vote upon a proposed plan of reorganization and to receive consideration if the plan becomes effective are those whose policies or contracts are in force on the date the board of directors of the insurance company adopts the plan. § 7312(e)(3). Section 7312(a)(2) defines policyholder to mean "a person, as determined by the records of a mutual life insurer," who is deemed to be the "policyholder" of a life insurance policy, annuity contract, or accident and health insurance policy which the insurance company is authorized to sell pursuant to Section 1113(a).

10. Section 7312(h)(1) authorizes the Superintendent to appoint one or more qualified, disinterested persons or institutions as consultants to advise him on any matters related to a proposed reorganization.

11. The Superintendent is required to hold a public hearing on the fairness of the terms and conditions of a proposed plan of reorganization, the reasons and purposes for the mutual life insurer to demutualize, and whether the reorganization is in the interest of the mutual life insurer and its policyholders and is not detrimental to the public. § 7312(i). The insurer is required to mail a notice of the time, place, and purpose of the hearing, and a notice of the date, time, and place for the policyholder vote on the plan, at least thirty days in advance to the last known address of each policyholder eligible to vote, as shown on

the records of the company. The two notices may be combined and must include a copy of the plan and such explanatory information as the Superintendent may approve or require. § 7312(i), (k). In addition, the insurer is required to provide notice of the hearing, not less than fifteen days nor more than sixty days in advance, by publication in three newspapers of general circulation, at least one of which must be in the county in which the insurer has its principal office. § 7312(i).

12. Within sixty days after the conclusion of the public hearing, the Superintendent is required to approve the plan of reorganization if he finds that the proposed reorganization, in whole and in part, does not violate the New York Insurance Law, is fair and equitable to the policyholders and is not detrimental to the public, and that, after giving effect to the reorganization, the reorganized insurer will have an amount of capital and surplus the Superintendent deems reasonably necessary for its future solvency. § 7312(j). The Superintendent may not disapprove of a plan of reorganization for the reason that the mutual life insurer selected one of the methods provided for in Section 7312(d) rather than another. *Id.*

13. A proposed plan of reorganization must also be approved by the affirmative vote of two-thirds of all votes cast by policyholders entitled to vote. § 7312(k)(2). The Superintendent is required to appoint insurance department personnel or other disinterested persons as inspectors to supervise the policyholder vote. § 7312 (k)(4).

14. A plan that has been approved by the Superintendent and policyholders will take effect in accordance with its terms on the date when a copy of the plan, with the approval of the Superintendent endorsed on it, and a

certification by the inspectors of the results of the vote, have been filed in the office of the Superintendent "or on such later date, if any, as may have been specified in or determined in accordance with said plan or pursuant thereto." § 7312(1).

II. Procedural History

15. In late 1998, MetLife informed the New York State Insurance Department (the "Department") that it had determined to formulate a plan to convert to stock form pursuant to Section 7312. MetLife advised the Department that, as part of its Plan of Reorganization (the "Plan"):[2] (1) MetLife would create a new holding company, MetLife, Inc., a Delaware corporation (the "Holding Company"), to own all of the common stock of the converted insurer; (2) MetLife would establish the MetLife Policyholder Trust (the "Trust") to hold the shares of common stock of the Holding Company (the "Common Stock") issued to eligible policyholders as consideration in exchange for their policyholders' membership interests; (3) MetLife would operate the majority of its individual participating policies as a "closed block" to ensure that the reasonable dividend expectations of the owners of such policies would be met after the reorganization; (4) the Holding Company would raise capital by means of an initial public offering of Common Stock (the "IPO"); and (5) subject to certain restrictions, policyholders holding

[2] Except as otherwise indicated, any capitalized term has the meaning set forth in the Plan or the Trust Agreement.

Common Stock through the Trust would be able to sell their shares after the IPO on a commission-free basis.

16. In connection with the proposed reorganization of MetLife, the Superintendent appointed Fried, Frank, Harris, Shriver & Jacobson ("Fried Frank") to serve as legal consultant, The Blackstone Group L.P. ("Blackstone") to serve as financial consultant, Milliman & Robertson, Inc. ("M&R") to serve as actuarial consultant, and Ernst & Young LLP ("E&Y," and collectively with Fried Frank, Blackstone, and M&R, the "Consultants") to serve as accounting consultant. Subsequently, the Superintendent also appointed five Department employees as inspectors responsible for monitoring the policyholder voting process and appointed E&Y to assist these inspectors.

17. The draft Plan, draft MetLife Policyholder Trust Agreement (the "Trust Agreement"), draft Policyholder Information Booklets, Parts One and Two, draft actuarial documents, and other related materials were reviewed by the Department and its advisers. In addition, these documents and materials were the subject of meetings and discussions among the Department and its Consultants and MetLife and its advisers, including Pricewaterhouse-Coopers LLP ("PwC"), actuarial advisers, Goldman, Sachs & Co. ("Goldman, Sachs") and Credit Suisse First Boston Corporation ("CS First Boston"), financial advisers (Goldman, Sachs and CS First Boston, collectively, the "Company Financial Advisers"), and Debevoise & Plimpton ("Debevoise"), legal advisers. Further, at the request of the Department and its Consultants or upon their own initiative, MetLife and its advisers submitted additional documents, materials, and information concerning significant issues presented by the Plan. As a result of these efforts, multiple drafts of the Plan, the Trust Agreement, the

Actuarial Contribution Principles and Methodologies, the Actuarial Contribution Memorandum, and other related documents were submitted by MetLife and reviewed by the Department and its Consultants. In addition, multiple drafts of the Policyholder Information Booklets, Parts One and Two, as well as other policyholder disclosure materials, were submitted by MetLife and reviewed by the Department and its Consultants.

18. On September 28, 1999, the Board of Directors of MetLife (the "Board") unanimously adopted the Plan and various exhibits and schedules thereto, including the Trust Agreement. As adopted, the Plan provided for, among other things, the formation of the Holding Company and the Trust, the establishment of a closed block, the completion of an IPO simultaneously with the effective date of the reorganization, and a commission-free program for policyholders holding Common Stock through the Trust to sell their shares or purchase additional shares, subject to certain restrictions (the "Purchase and Sale Program").

19. In October 1999, MetLife proposed to augment the IPO, if necessary, with one or more Other Capital Raising Transactions, which might include public mandatorily-convertible preferred securities, public convertible preferred securities, or public debt securities, commercial paper, or bank borrowings. MetLife also determined that it might be necessary to limit the amount of cash that could be paid to certain policyholders allocated more than 25,000 shares of Common Stock who elect to receive their consideration in the form of cash. Accordingly, MetLife amended its Plan to provide for such additional measures. Subsequently, in January 2000, MetLife advised the Department of its proposal to conduct a public offering of mandatorily-convertible preferred securities, a proposal modified to

include issuance of a capital note to fund the interest payments to be made on the mandatorily-convertible preferred securities.

20. The Plan, as amended, was adopted unanimously by the Board, on November 3 and 16, 1999. On November 3, 1999, MetLife, the Holding Company, Wilmington Trust Company ("Wilmington Trust"), as Trustee, and ChaseMellon Shareholder Services, L.L.C. ("CMSS"), as Custodian, executed the Trust Agreement. A copy of the Plan, all the exhibits and schedules to the Plan, including the Trust Agreement, Policyholder Information Booklets, Parts One and Two, the Actuarial Contribution Memorandum, and related disclosure documents were submitted to the Department on November 24, 1999.

21. That day, MetLife began mailing notice of the public hearing and the policyholder vote by first-class mail to all policyholders eligible to vote. The notice advised policyholders that the Superintendent would conduct a hearing on the Plan on January 24, 2000 at the Grand Hyatt New York, commencing at 10:00 a.m., and that policyholders could vote on the Plan through February 7, 2000, by mail or by proxy or in person at the headquarters of MetLife, One Madison Avenue, on February 7, 2000, between 10:00 a.m. and 4:00 p.m. The notice was accompanied by: a ballot; cards listing the Eligible Policies owned by each policyholder, the form in which consideration for each such Policy would be paid, and, for policyholders eligible to receive stock, an option to elect to receive cash instead, subject to certain restrictions; voting instructions; a set of general questions and answers; the Policyholder Information Booklet, Part One, containing a copy of the Plan, the Trust Agreement, and the Purchase and Sale Program Procedures, a summary of the Plan and

its exhibits and schedules, and other explanatory information; the Policyholder Information Booklet, Part Two, containing financial information about MetLife and the proposed reorganization; and a letter from the Department describing the reorganization process. For certain policyholders, including the owners of industrial life insurance, for whom MetLife could not obtain correct, current addresses, the Company mailed an abbreviated notice of the proposed reorganization to the last known address of such policyholders, advising them that if they received the notice, they could call a toll-free telephone number to obtain the complete set of policyholder disclosure materials.

22. Notice of the public hearing was published in the State Register on December 8, 1999, and in *The New York Times* (National Edition), *USA Today*, *Poughkeepsie Journal, Albany Times Union*, and *The Boston Globe* on January 4, 2000.

23. The notice advised policyholders that they could register with the Department by January 20, 2000 to make an oral statement regarding the proposed reorganization at the public hearing and that they could submit a written statement to the Department by no later than February 7, 2000. Toll-free telephone numbers for policyholders to obtain additional information and materials from MetLife were included in the notice and the Policyholder Information Booklet, Part One, including a toll-free number to call on or after January 30, 2000 for information about the total number of shares allocated to each policyholder as consideration. The notice and copies of the Plan and all the exhibits and schedules to the Plan, including the Purchase and Sale Program Procedures and the Actuarial Contribution Memorandum, were made

available for public inspection at the headquarters of MetLife during regular business hours and on the internet website of the Company.

24. MetLife completed its policyholder mailing on December 21, 1999. According to an affidavit MetLife submitted to the Department on January 14, 2000, the mailing was completed by no later than 30 days prior to the scheduled date of the public hearing and the MetLife policyholder vote, and the required notices were given to each eligible policyholder at the last known address of such eligible policyholder, as shown on the books and records of the Company.

25. The Superintendent conducted the public hearing on January 24, 2000. Approximately 150 people attended. Six witnesses presented oral statements and submitted written statements on behalf of MetLife: Robert H. Benmosche, Chairman of the Board, President and Chief Executive Officer; Stewart G. Nagler, Vice-Chairman of the Board of Directors and Chief Financial Officer; Gary A. Beller, Senior Executive Vice-President and General Counsel; Kenneth M. Beck of PwC; Jonathan Plutzik of CS First Boston; and Howard A. Silverstein of Goldman, Sachs. In addition, MetLife submitted a written opinion by Charles W. de Seve, President, American Economics Group, addressing the competitive effects of the demutualization. MetLife also submitted copies of the policyholder mailings, the Plan documents, and certain other materials, affidavits, and Board resolutions.

26. Twenty people, including MetLife policyholders and their representatives, registered with the Department to speak at the hearing. Nine people presented oral statements at the hearing; several of the speakers also submitted

written statements. At the hearing, the Superintendent announced that the hearing record would be held open for written submissions until February 14, 2000 and that the Department would make the oral testimony presented at the hearing available on its internet website. The hearing ended after approximately three hours, and all persons who had registered to speak at the hearing had the opportunity to do so.

27. The policyholder vote was completed on February 7, 2000. The inspectors of the Department certified that 2,761,746 eligible policyholders cast a vote upon the Plan – either in person, by mail, or by proxy form – and that 2,572,832 (93.16%) voted in favor of the demutualization.

28. The hearing record closed on February 14, 2000. The Department received a total of 165 letters and other written statements on the proposed reorganization, as well as written responses by MetLife and its advisers to certain of the letters and issues raised at the public hearing. All of these submissions were reviewed by the Department and its Consultants and were made part of the hearing record.

29. In February 2000, in response to a change in the financial services sector of the capital markets, MetLife informed the Department of its proposal to conduct private placements of Common Stock (the "Private Placements"), concurrently with the IPO, to two large institutional investors, Credit Suisse Group, or an affiliate, and Banco Santander Central Hispano, S.A., or an affiliate. Pursuant to Section 10.4 of the Plan and Section 7312(f), the Plan was amended to authorize a private placement. As amended, the Plan was adopted unanimously by the Board on March 9, 2000.

30. On April 3, 2000, the Department issued a letter pursuant to Section 1501(c) determining that, for purposes of Article 15 of the New York Insurance Law, neither the Trust nor the Trustee would, as a result of the proposed reorganization, be deemed to control MetLife, the Holding Company, or any other insurer or person controlled by the Holding Company so long as MetLife, the Holding Company, the Trust, and the Trustee comply with certain conditions set forth in the letter. The determination of non-control will remain in effect until revoked by the Superintendent in accordance with its terms.

III. Plan of Reorganization

31. In the certified resolutions adopting the Plan, the Board determined that:

(1) the Plan is fair and equitable to policyholders of MetLife (as contemplated by Section 7312(e) of the New York Insurance Law);

(2) reorganization pursuant to Section 7312(d)(4) under the method described in the Plan is the most appropriate method of reorganization under Section 7312(d) for MetLife to achieve the purposes set forth in Article I of the Plan for the reasons set fort in Section 3.2 of the Plan;

(3) the Plan will not substantially lessen competition in any line of insurance business; and

(4) the Plan is in the best interests of MetLife and its policyholders.

A. Purpose and Reasons for the Reorganization

32. The Plan states that the main purpose for the reorganization from mutual to stock form is to change the structure of the Company in a way that will increase its potential for long-term growth and financial strength. The Plan further states that by becoming a stock company MetLife can raise money more efficiently and have greater flexibility to make acquisitions, which will enable the Company to increase its market leadership, financial strength, and strategic position and provide additional security to its policyholders.

33. The Plan provides that, as a result of the Reorganization, MetLife will become a stock insurance company subsidiary of the Holding Company, and that the Common Stock will be publicly traded. MetLife represents that it will thus be better able to acquire other companies and to raise capital more efficiently. MetLife further represents that conversion will facilitate the efforts of the Company to respond to changes in the laws relating to affiliations between insurance companies and other types of companies, such as banks.

34. Several policyholders objected to any reorganization of MetLife, alleging that conversion would: (1) dilute the focus of management from supervising the insurance business; (2) insulate management from accountability to policyholders; and (3) jeopardize employee and agent compensation and retiree benefits by the imposition of a "new" company-wide emphasis on profitability. In enacting Section 7312, however, the Legislature expressly determined that domestic mutual life insurers should have the authority to demutualize, provided that the interests of policyholders are also protected in the process. Objections

to demutualization under any circumstances are contrary to this legislative intent.

35. Moreover, the statements in the Plan and the other submissions of MetLife to the Department with respect to the purpose and reasons for converting to stock form are consistent with the finding of the Legislature that "flexibility of corporate form can be an important factor in an environment of rapidly changing economic conditions." Section 1 of L. 1988, ch. 683; amended L. 1988, ch. 684 §1 (Sept. 1, 1988), *reprinted in* N.Y. Ins. Law, § 7312 note (McKinney Supp. 1999-2000) (legislative findings).

36. The Plan provides that the demutualization will "make it easier for [MetLife] to take advantage of changes in laws, if any, relating to affiliations between insurance companies and other types of companies, such as banks." On November 12, 1999, President Clinton signed into law the Financial Services Modernization Act of 1999, also known as the "Gramm-Leach-Bliley Act." The Gramm-Leach-Bliley Act provides for significant, comprehensive changes in the financial services industry. Among other things, the Gramm-Leach-Bliley Act rescinds former restrictions on affiliations among insurance companies, banks, and securities firms. By converting to a stock company and creating acquisition currency in the form of Common Stock, as MetLife proposes to do under the Plan, the Company will be better able to take advantage of these legislative changes. Conversely, if MetLife were to remain a mutual company, MetLife could be significantly disadvantaged as compared to its competitors which are stock companies and have equity capital to expend in acquisitions of, and mergers and consolidations with, other financial services companies.

37. One member of the public urged the Superintendent to conclude that the reorganization of MetLife is improper, because when the Company converted to mutual form in 1915, MetLife represented in public statements and published documents that the policyholders of MetLife would maintain their ownership "for all time." The current policyholders of Metlife, however, are entitled to vote on a proposed reorganization pursuant to Section 7312 and have elected to approve such a reorganization and to exchange their Policyholders' Membership Interest for consideration in compliance with the statute.

38. Finally, in reliance upon Sections 623 and 910 of the Business Corporation Law and Section 7119, certain policyholders objected that MetLife failed to advise policyholders of their dissenters' rights under the law. Section 108(d) of the New York Insurance Law however, exempts mutual insurance companies from the provisions of Articles Six and Nine of the Business Corporation Law, and Section 7119 confers appraisal rights only upon dissenting stockholders of a domestic stock insurance company, not upon policyholders of a mutual insurance company. The rights of policyholders of a domestic mutual life insurance company reorganizing to stock form are governed exclusively by Section 7312. Accordingly, MetLife had no obligation to advise policyholders of dissenters' rights not legally available to them.

B. Major Features of the Plan

39. The Plan, adopted pursuant to Method 4, provides that, as part of the Reorganization, the Policyholders' Membership Interests will be extinguished and Eligible Policyholders will receive shares of Company

Common Stock (to be exchanged for an equal number of shares of Common Stock and held through the Trust), cash, or Policy Credits, in each case in proportion to the Allocable Common Shares allocated to each Eligible Policyholder. The Plan states that the economic value of this compensation would not be available to Eligible Policyholders so long as MetLife remained a mutual company.

40. Article III of the Plan also summarizes the other major features of the reorganization:

> (1) the Closed Block Business will be operated by MetLife as a closed block of participating business for the exclusive benefit of the Policies included in the Closed Block, for policyholder dividend purposes only, and none of MetLife's other Policies will be included in the Closed Block;
>
> (2) all Participating Policies will continue to be Participating Policies in accordance with their terms;
>
> (3) the Trust will be established and operated in accordance with the Trust Agreement;
>
> (4) the Holding Company will conduct the IPO and encourage and assist in the establishment of a public market for shares of Common Stock in conjunction with the IPO;
>
> (5) subject to the provisions of the Plan, the Holding Company may conduct one or more Private Placements and Other Capital Raising Transactions;
>
> (6) the Holding Company will establish the Purchase and Sale Program, which, subject to

certain limitations set forth in the Trust Agreement and the Purchase and Sale Program Procedures, will enable Trust Beneficiaries to purchase additional shares of Common Stock to be held in the Trust or to have their allocated Trust Shares withdrawn from the Trust for sale, in each case without the payment of commissions or other fees; and

(7) beginning on the first anniversary of the Plan Effective Date, Trust Beneficiaries will be able to withdraw all (but not less than all) of their allocated Trust Shares from the Trust.

41. The Plan provides that it will become effective on the date on which the closing of the IPO and any one or more Private Placements and Other Capital Raising Transactions occur (the "Plan Effective Date"). The Plan also provides that the Plan Effective Date will not occur later than the first anniversary of the date the Plan is approved by the Superintendent pursuant to Section 7312(j). The one-year period may be extended for one or more additional periods if requested by the Board and approved by the Superintendent.

42. MetLife submitted to the Department an opinion by Debevoise and a statement by Gary A. Beller, Senior Executive Vice President and General Counsel of MetLife, that the provisions of the Plan are consistent with the requirements of Section 7312 and do not violate the New York Insurance Law.

IV. The Trust

43. The use of a trust structure is expressly contemplated by Method I of Section 7312, and MetLife has proposed a variant of that structure under Method 4.

MetLife has demonstrated to the Department that its reorganization presents circumstances uniquely suited to the use of a trust.

44. The Plan states that the Company has more than eleven million policyholders and that if each of these policyholders individually were to hold shares of Common Stock after the reorganization, the Holding Company would have a number of stockholders several times greater than that of any of the largest U.S. public corporations. The Plan provides for MetLife to establish the Trust to hold the Common Stock allocated to policyholders. According to the Plan, the primary purpose of the Trust is to help the Holding Company efficiently manage the administration of the accounts of the Trust Beneficiaries and the costs associated with such a large number of stockholders in a manner that would not materially disadvantage Eligible Policyholders who receive Common Stock.

45. In proposing to use a trust structure, MetLife considered: (1) the administrative complexity of running a public company with a multi-million stockholder base, including the difficulty in obtaining a quorum for stockholder votes; (2) the extraordinary costs associated with mailings to millions of stockholders in compliance with the federal securities laws and in connection with the election of directors and other routine matters requiring stockholder voting; (3) the negative effect of such costs upon the projected earnings of MetLife, the IPO Price, and the corresponding value of consideration to be paid to Eligible Policyholders in the form of cash or policy credits; and (4) the difficulty the stock market could have in absorbing millions of shares of Common Stock from sales by policyholders within a brief period of time, the possible disorderly trading market that could result, and the negative

effect of these conditions upon the IPO Price and the price at which Trust Beneficiaries could sell their Trust Shares for some time into the future.

A. The Trust Agreement

46. The Plan and the Trust Agreement provide that the Company will establish the Trust for the exclusive benefit of Trust Beneficiaries. Upon its reorganization, MetLife will issue to the Trust a number of shares of Company Common Stock equal to the number of Allocable Common Shares allocated under the Plan to Trust Eligible Policyholders. Trust Eligible Policyholders will be allocated an aggregate number of Trust Interests equal to the number of shares of Company Common Stock issued to the Trust and will thereby become Trust Beneficiaries. The Trust will then exchange the shares of Company Common Stock for an equal number of shares of Common Stock to be held for the benefit of the Trust Beneficiaries, each of whom will be allocated an individual number of Trust Interests equal to the number of shares of Common Stock held for such Beneficiary in the Trust. The Trust Interests represent undivided fractional interests in the Common Stock and other assets of the Trust beneficially owned by the Trust Beneficiaries through the Custodian, as the holder of record on the books of the Holding Company. Legal title to the Common Stock and all other assets of the Trust will be vested in the Trust.

47. Under the Trust Agreement, a Trust Interest will entitle a Trust Beneficiary to certain rights, including the right to: (1) receive dividends distributed upon Trust Shares; (2) have Trust Shares withdrawn from the Trust to be sold for cash through the Purchase and Sale Program,

subject to certain restrictions; (3) deposit in the Trust additional shares of Common Stock purchased through the Purchase and Sale Program; (4) elect to withdraw all Trust Shares after the first anniversary of the Plan Effective Date; and (5) instruct the Trustee to vote the Trust Shares of the Trust Beneficiary on certain matters.

48. The Trust will be administered by the Trustee, and certain record keeping services will be performed by the Custodian. The Trust Agreement requires that the Trustee and any successor Trustee must, at all times, be an institution duly authorized to act as a trustee in the State of Delaware and maintain a combined capital and surplus of at least $150 million. Until the first anniversary of the Plan Effective Date, the appointment of any successor Trustee or successor Custodian will be subject to the approval of the Superintendent.

49. The Trust Agreement provides that the Holding Company will pay, or directly reimburse the Trustee or Custodian for, all costs and expenses relating to the Trust, in the case of the Trustee, and relating to the holding of Trust Interests, in the case of the Custodian, including, but not limited to, the fees and expenses of the Trustee and Custodian set forth in the Trust Agreement. The Holding Company, however, will not reimburse the Trustee or the Custodian for the expense of mailing to Trust Beneficiaries any proxy or other materials received by the Trustee on behalf of anyone but the Holding Company. In addition, the Trustee and the Custodian will be entitled to fees for their services as set forth, respectively, in a Fee Agreement between MetLife, the Holding Company and Wilmington Trust, and a Trust Record Keeping Services Agreement between MetLife, the Holding Company, and

CMSS, copies of which have been submitted to the Department.

50. At the public hearing, it was suggested by one member of the public that Section 7312(e)(2) does not permit the use of Trust Interests. Section 7312(e)(2), however, states that consideration may take the form of "cash, securities of the reorganized insurer or securities of another institution or institutions, a certificate of contribution, additional life insurance or annuity benefits, increased dividends or *other consideration or any combination of such forms of consideration*." (Emphasis added.) The use of Trust Interests to evidence beneficial ownership of the Trust Shares is permissible under Section 7312 and, in light of the benefits to be conferred upon policyholders through the use of a trust structure, is fair and equitable to Trust Eligible Policyholders.

B. Withdrawal of Trust Shares and Transfer of Trust Interests

51. The Plan and Trust Agreement provide that: (1) prior to the first anniversary and continuing for the duration of the Trust, Trust Beneficiaries may sell their shares, subject to certain restrictions, through the commission-free Purchase and Sale Program; (2) Trust Beneficiaries may withdraw all, but not less than all, of their Trust Shares from the Trust beginning on the first anniversary of the Plan Effective Date; and (3) upon withdrawing their shares from the Trust, Trust Beneficiaries will no longer be eligible to participate in the Purchase and Sale Program.

52. The right of Trust Beneficiaries to withdraw their Trust Shares will continue until the Trust is terminated. Trust Beneficiaries who withdraw their shares to hold, rather than to sell or transfer, will have the same rights, including voting rights, as the other stockholders of the Holding Company.

53. The Trust Agreement restricts the ability of Trust Beneficiaries to transfer ownership of their Trust Interests. Transfers will be permitted only in the following limited circumstances:

(1) to a spouse or descendant;

(2) to a charity qualifying for tax-exempt status under the Code;

(3) to a trust established to hold Trust Interests on behalf of an employee benefit plan;

(4) to a trust established for the exclusive benefit of a Trust Beneficiary, a spouse or descendants of a Trust Beneficiary, or a qualifying charity;

(5) upon the death or bankruptcy of a Trust Beneficiary, through a will, or under applicable law;

(6) to another entity if the Trust Beneficiary has merged or consolidated into, or sold substantially all of its assets to, that entity; and

(7) from a trust holding an insurance policy or annuity contract in accordance with the terms of that trust.

Except for transfers from the estate of a deceased Trust Beneficiary to one or more beneficiaries taking by operation of law, no partial transfer otherwise permitted under the Trust Agreement will be given effect if the transfer

would result in a transferee not owning a whole number of Trust Interests.

54. Several policyholders objected to the restrictions the Trust imposes upon the liquidity of their consideration. MetLife, however, emphasized the need to manage the entry into the public market of the unprecedented number of shares of Common Stock to be issued as part of the reorganization. According to MetLife, if the policyholders were free to sell these shares in the market immediately following the IPO (a situation known as market "overhang"), the public market for the Common Stock would be destabilized, adversely affecting the IPO Price, the subsequent trading price of the Common Stock, and the value of the consideration to be received by policyholders, whereas, if policyholders were prohibited from withdrawing their shares from the Trust for a year, except to sell through the Purchase and Sale Program, the "overhang" effect would be reduced substantially. In light of these considerations, the one-year restriction upon withdrawals from the Trust is fair and equitable.

C. Distributions and Dividends

55. The Trust Agreement provides that the Trustee will hold any distributions or dividends received upon the Trust Shares and any interest earned on such dividends until the date that the Trustee is required under the Trust Agreement to distribute distributions, dividends, and interest to the Trust Beneficiaries through the Custodian.

56. The Trust Agreement requires regular cash dividends received by the Trust during any six-month period ending on June 30 or December 31 to be distributed to the Trust Beneficiaries on the following July 31 or

January 31, respectively, and it requires the Holding Company to set a payment date for the dividends so that they are distributed to the Trust Beneficiaries within ninety days after the Trustee has received them. Pending such distribution, the dividends will be invested by the Trustee. Other cash dividends will be distributed on the first business day following the thirtieth day after the Trustee has received them. Distributions will include all interest accrued on the dividends during the period they are held in the Trust.

57. Alternatively, the Trust Agreement permits the Trustee to arrange with the Holding Company for direct payment by the Holding Company of cash dividends to Trust Beneficiaries at the same time as the payment of dividends to the stockholders of the Holding Company. MetLife informed the Department (as well as the Securities and Exchange Commission (the "SEC") in the Company's request for a no-action ruling) that it intends to make immediate dividend payments in accordance with this provision.

58. The Trust Agreement provides that any distribution of shares of Common Stock will be deposited in the Trust and held for the Trust Beneficiaries. If the Common Stock is exchanged for common stock of another company in connection with a merger or consolidation of the Holding Company with another company, or if rights are issued to Trust Beneficiaries through a stockholder rights plan, the new common stock or rights will be held in the Trust under the Trust Agreement. In all other cases, if the shares of Common Stock are exchanged for securities or other property, the Custodian will distribute the securities or other property to the Trust Beneficiaries based on the number of their allocated Trust Shares.

D. Fiduciary Duties

59. After MetLife reorganizes to stock form, the Company will be owned and controlled by the Holding Company, a publicly-traded Delaware corporation. Under the laws of Delaware, the directors of the Holding Company will owe a fiduciary duty to act in the best interests of the Holding Company and its stockholders.

60. Both the Plan and the by-laws of the Holding Company provide that each director of the Holding Company will take the interests of the Trust Beneficiaries into account as if they were stockholders of the Holding Company, except to the extent that any director determines, based on the advice of counsel, that to do so would violate his or her duties as a director under Delaware law. MetLife has advised the Department that it expects that the interests of Trust Beneficiaries and stockholders will not conflict and that consideration by Holding Company directors of the interests of Trust Beneficiaries should not violate Delaware law.

E. Voting Rights

61. In order to realize significant cost savings, the Plan provides that Trust Beneficiaries will be able to vote the Trust shares only on corporate matters requiring stockholder votes which are outside of the ordinary course of business ("Beneficiary Consent Matters"), and not on routine corporate matters.

62. The Trust Agreement defines Beneficiary Consent Matters to include:

(1) the election or removal of directors of the Holding Company, where a contesting stockholder of the Holding Company, has in compliance with the provisions of the Holding Company's by-laws and applicable law, given timely notice of a proposal to (a) nominate one or more candidates or a slate of candidates for election as directors of the Holding Company in opposition to a nominee of the Holding Company's board of directors, (b) oppose one or more nominees of the Holding Company's board of directors for election, (c) remove one or more directors of the Holding Company for cause, or (d) nominate one or more candidates for election to fill a vacancy or vacancies resulting from the removal of one or more directors by the Holding Company's stockholders;

(2) the merger or consolidation of the Holding Company, into or with any person, the sale, lease, or exchange of all or substantially all of the property or assets of the Holding Company, or the recapitalization or dissolution of the Holding Company, in each case which requires a vote of the Holding Company's stockholders under applicable Delaware law;

(3) any other transaction that would result in an exchange or conversion of Trust Shares for cash, securities, or other property;

(4) a proposal requiring the board of directors of the Holding Company to amend or redeem rights under the Holding Company's stockholder rights plan, other than a proposal with respect to which the Holding Company has received advice of nationally-recognized legal counsel to the effect that the proposal is not a proper subject for stockholder action under Delaware law; and

(5) prior to the first anniversary of the Plan Effective Date, (a) the issuance of Common Stock after the Plan Effective Date at a price materially less than the then prevailing market price of the Common Stock, other than through an underwritten offering or to officers, employees, directors, or insurance agents of the Holding Company or any Subsidiary of the Holding Company pursuant to an employee benefit plan, when a vote of the Holding Company's stockholders with respect to the issuance is conducted or is required to be conducted under applicable Delaware law, (b) any matter that requires approval by a vote of more than a majority of the outstanding Common Stock of the Holding Company entitled to vote thereon under Delaware law, or the certificate of incorporation or the by-laws of the Holding Company, or (c) an amendment to the certificate of incorporation or by-laws of the Holding Company that is submitted for approval to the Holding Company's stockholders.

63. In connection with any Beneficiary Consent Matter, the Custodian will mail proxy materials to the Trust Beneficiaries, and the Trustee will vote, assent, or consent the aggregate number of Trust Shares in favor of and in opposition to the matter, or abstain from voting on the matter, in the same proportion as the voting instructions received from the Trust Beneficiaries.

64. On matters other than Beneficiary Consent Matters, the Trustee will vote, assent, or consent the Trust Shares in favor of and in opposition to the matter, or abstain from voting on the matter, in accordance with the recommendation given by the board of directors of the Holding Company to its stockholders, or if no recommendation is given, as directed by the board of directors of the

Holding Company. Trust Beneficiaries will not be permitted to vote on non-Beneficiary Consent Matters.

65. Voting on such matters by recommendation or direction of the board of the Holding Company is not unreasonable. Based on the historically-low number of policyholders of the Company voting in Board elections, MetLife does not expect that a significant number of the Trust Beneficiaries are likely to participate as active stockholders of the Holding Company. Thus, without the Trust and the voting restrictions described above, the Holding Company would encounter significant difficulties in obtaining the necessary quorum for stockholder meetings and, as previously discussed, would incur substantial costs and expenses adversely affecting the Holding Company, the IPO Price, and the value of the consideration received by the policyholders.

66. Certain members of he public have suggested that the policyholder mailings did not adequately disclose the voting restrictions to be imposed upon Trust Beneficiaries. The Department and its Consultants reviewed those materials in detail before they were mailed to policyholders and find no basis for this objection. The voting rights and restrictions were identified and explained in clearly-identified sections of the Policyholder Information Booklet, Part One, including a chart enabling policyholders to compare and contrast their voting rights before and after the demutualization. In addition, the Policyholder Information Booklet, Part One included complete copies of the Plan and the Trust Agreement, containing the specific provisions relating to policyholder voting rights. These disclosures were sufficient to allow policyholders to make an informed decision regarding the voting rights afforded to Trust Beneficiaries under the Plan.

F. Tender Offers, Exchange Offers, and Counter-Offers

67. The Trust Agreement also provides for Trust Beneficiaries to participate in tender offers, exchange offers, and counter-offers for the Common Stock on the same basis as the stockholders of the Holding Company. If such an offer is made, the Custodian will mail all materials received by the Trustee, the Custodian, or the Holding Company relating to the offer to all Trust Beneficiaries subject to the offer, and those Trust Beneficiaries will be able to tender or exchange their Trust Shares. If a Trust Beneficiary wishes to tender or exchange his or her Trust Shares, the Trustee will withdraw the shares from the Trust and distribute them to the Program Agent for the Purchase and Sale Program. The Program Agent will tender or exchange the shares on the behalf of the Trust Beneficiary. Any shares not tendered or exchanged will be redeposited in the Trust. If there is a merger or consolidation of the Holding Company where stockholders of the Holding Company have the opportunity to elect to receive cash, stock, or other compensation, Trust Beneficiaries will also be given the same election with respect to their Trust Shares. These provisions are fair and equitable.

G. Termination of the Trust

68. The Trust Agreement provides for both a mandatory and a permissive termination of the Trust. Unless terminated earlier pursuant to the permissive provisions of the Trust Agreement, the Trust must be terminated on the first to occur of: (1) the ninetieth day after the date on which the Trustee receives written notice from the Holding Company that the total number of Trust Shares held by the Trust is equal to 10% or less of the outstanding shares

of Common Stock, or (2) the date on which the last Trust Share is withdrawn, distributed, or exchanged.

69. Pursuant to the Trust Agreement, the board of directors of the Holding Company may also terminate the Trust: (1) on the ninetieth day after the date on which the Trustee receives written notice from the Holding Company that the total number of Trust Shares held by the Trust is equal to or less than 25% of the outstanding shares of Common Stock, or (2) the date the Trustee receives notice that, because of changes to laws or changes in facts or circumstances relating to the Trust, maintaining the Trust has or is expected to become burdensome to the Holding Company or the Trust Beneficiaries; (3) if any rights issued under the stockholder rights plan adopted by the Holding Company and held by the Trust become separately tradable from the Trust Shares to which they relate; or (4) upon the entry of a court order for termination or dissolution of the Trust.

70. The Trust Agreement provides that, concurrently with the winding up of the Trust, the Holding Company, may, in its discretion, offer to purchase all or a portion of the remaining Trust Shares from the Trust Beneficiaries at a price equal to the average of the closing prices of the Common Stock on the 20 consecutive trading days preceding such offer. If, upon termination of the Trust, there is no currently-valid mailing address for a Trust Beneficiary, the Trust Shares and any other assets of the Trust allocated to that Trust Beneficiary will be distributed to the Holding Company to hold on behalf of the Trust Beneficiary in accordance with applicable law.

71. Based upon the foregoing considerations, the Superintendent has determined that (1) it is in the best interest of MetLife and its policyholders to establish the Trust, and (2) the operation of the Trust is fair and equitable to the policyholders of MetLife.

V. Purchase and Sale Program

72. The Plan provides for the establishment of the Purchase and Sale Program for Trust Beneficiaries to sell their Trust Shares and purchase additional shares of Common Stock (to be held in the Trust), subject to certain restrictions, on a commission-free basis. The specific features of the Purchase and Sale Program are set forth in the Plan, the Trust Agreement and the Purchase and Sale Program Procedures, Exhibit J to the Plan, which were printed in full in the Policyholder Information Booklet, Part One. Subject to certain restrictions, Trust Beneficiaries may use the Purchase and Sale Program both to buy and sell shares, on as many occasions as they wish, for the duration of the Trust. On or after the first anniversary of the Plan Effective Date, Trust Beneficiaries who withdraw all of their Trust Shares from the Trust will cease to be eligible to participate in the Purchase and Sale Program.

73. The Purchase and Sale Program will be administered by a Program Agent appointed by the Holding Company. The initial Program Agent will be CMSS, the Custodian of the Trust, and, as permitted by the Trust Agreement, a broker-dealer affiliate of CMSS will perform certain activities described in the Purchase and Sale Program. The SEC requires an independent program agent in corporate purchase and sale programs to ensure compliance with tender offer rules.

74. Until the first anniversary of the Plan Effective Date, the Holding Company must obtain the prior approval of the Superintendent before any amendment to the Purchase and Sale Program can take effect. After the first anniversary, the Holding Company must provide prior written notice of any amendment to the Trust Beneficiaries before the amendment can take effect. Upon receipt of the notice, Trust Beneficiaries who object to an amendment will be able to withdraw their shares from the Trust.

75. Purchases under the Purchase and Sale Program may be made at any time beginning on the first trading day following the ninetieth day after the date the Holding Company becomes subject to the reporting requirements of the Securities Exchange Act of 1934. Only Trust Beneficiaries with fewer than 1,000 Trust Interests may purchase additional shares of Common Stock (to be held in the Trust) through the Purchase and Sale Program. Trust Beneficiaries must purchase at least $250 worth of shares or such smaller amount as would bring their ownership to 1,000 Trust Interests.

76. Sales under the Purchase and Sale Program may be made at any time after the later of: (i) the termination of any stabilization arrangements and trading restrictions in connection with the IPO, and (ii) the closing of all the over-allotment options of the underwriters that have been exercised and the expiration of all unexercised options in connection with the IPO – both of which are expected to occur within thirty days after the IPO.

77. Generally, each Trust Beneficiary may elect to withdraw from the Trust some or all of the Trust Shares allocated to the Trust Beneficiary to sell through the

Purchase and Sale Program, subject to the following limitations:

(1) each Trust Beneficiary holding 199 or fewer Trust Interests may elect to withdraw from the Trust for sale the number of shares of Common Stock held by the Trust equal to all, but not less than all, of the Trust Beneficiary's Trust Interests;

(2) each Trust Beneficiary holding more than 199 Trust Interests may elect to withdraw from the Trust for sale the number of shares of Common Stock held by the Trust equal to all or part of the Trust Beneficiary's Trust Interests, subject to the limitation that partial withdrawals may be made only in increments of 100 shares, and that following any such withdrawal for sale of part of the Trust Beneficiary's Trust Interests, the Trust Beneficiary holds at least 100 Trust Interests; and

(3) for the first 300 days following the Plan Effective Date, each Trust Beneficiary holding more than 25,000 Trust Interests will be subject to certain, aggregate volume limitations. Under the Purchase and Sale Program Procedures, if the total shares to be sold on the open market on behalf of all Trust Beneficiaries holding more than 25,000 Trust Interests on any day exceed the lesser of (i) 1/20th of 1% of the number of shares of Common Stock outstanding and (ii) 25% of the average daily trading volume for the 20 trading days (or such shorter period, if fewer than 20 trading days have elapsed since the Plan Effective Date) preceding the trade, the broker-dealer will only process trades on the open market up to that limit for Trust Beneficiaries holding more than 25,000 shares. The broker-dealer affiliate of

the Program Agent will either defer the excess shares to the next trading day (which will be subject to the same volume limitations on that day) or sell the shares as principal through a block trade or through a nationally recognized brokerage firm that will sell the shares, as agent at market clearing prices. For a period of 90 days following the Plan Effective Date, only CS First Boston and Goldman, Sachs, the lead managing underwriters for the IPO, may sell, as joint agents, the excess shares. After the first 300 days, these limitations will no longer apply and withdrawals for sale may be made as permitted under the Trust Agreement and the Purchase and Sale Program Procedures.

78. MetLife and the Company Financial Advisers considered the following issues, among others, when formulating the restrictions under the Purchase and Sale Program:

(1) that the policyholder overhang may have a negative impact on the IPO marketing effort potentially resulting in a lower IPO Price or post-IPO trading price;

(2) the need to impose temporary volume restrictions on sales of Trust Shares by Trust Beneficiaries holding large amounts of Trust Shares because of the risk that large sales of Common Stock in the first 12 months would depress the trading price of and cause erratic trading with respect to the Common Stock;

(3) the need to operate the Purchase and Sale Program efficiently; and

(4) the benefits to be gained by CS First Boston and Goldman, Sachs serving as exclusive agents

to sell Trust Shares from any surplus arising under the Purchase and Sale Program for a limited time period of 90 days, due to their familiarity with the market as co-lead underwriters of the IPO.

79. The Superintendent, upon the advice of his Consultants, has determined that the provisions of the Purchase and Sale Program should result in material benefits to the Trust Beneficiaries. For example, the time and volume limitations on sales by Trust Beneficiaries should help address investor concerns related to market overhang and create a more orderly after-market for the Common Stock, which, in turn, should have a positive effect upon the IPO Price and the post-IPO trading price of the Common Stock and the value of the consideration received by policyholders. In addition, for the MetLife policyholders allocated fewer than 1,000 shares of Common Stock, the Purchase and Sale Program establishes a commission-free brokerage account through which these policyholders can buy and sell shares of Common Stock (up to the maximum ownership limit of 1,000 shares) for the duration of the Trust – and from which they can withdraw their shares at any time after the first anniversary of the Plan Effective Date. The MetLife Purchase and Sale Program is fair and equitable to policyholders.

VI. The IPO, Private Placements, and the Other Capital Raising Transaction

80. The Plan provides that the conversion of MetLife to stock form and the IPO and one or more Private Placements and Other Capital Raising Transactions must occur simultaneously, within one year after the Superintendent approves the Plan, unless, at the request of the Company,

the Superintendent agrees to extend the time period. This provision affords MetLife ample flexibility for conducting an IPO and one or more Private Placements and Other Capital Raising Transactions, but is also fair and equitable to the policyholders of MetLife, who will not surrender their Policyholders' Membership Interests until the Company is in a position to: (1) raise capital to fund the payment of consideration in the form of cash and policy credits; and (2) encourage and assist in the establishment of a public market for the Common Stock for the benefit, among others, of policyholders receiving consideration in the form of stock.

A. Terms of the IPO

81. In the Policyholder Information Booklet, Part Two, distributed beginning on November 24, 1999, MetLife stated its intention to offer publicly up to an aggregate of 864 million shares of Common Stock, assuming a range between $14 and $24 per share (the "PIB Range"). The Booklet stated that "the final IPO Price would be "established through arm's length negotiations with representatives of the underwriters ... based on, among other things, prevailing market conditions, [MetLife's] historical performance, estimates of [MetLife's] business potential and earnings prospects, an assessment of [MetLife's] management and consideration of the above factors in relation to market valuations of companies in related businesses."

82. On February 29, 2000, MetLife filed with the SEC an amendment to its registration statement in which it disclosed that it had revised the terms of the IPO. The Company stated its intention to raise net proceeds of

approximately $2,381 million to $2,738 million by offering 179 million shares of Common Stock, subject to an overallotment provision of additional shares (which, if effected, would increase the total number of shares to 205,850,000 shares of Common Stock). The stock would be priced between $13 and $!5 [sic] per share. This filing range differs from the PIB Range because, according to MetLife and the Company Financial Advisers, market conditions for life insurance stocks have changed significantly since November 1999 (the date of the initial pricing range).

83. MetLife represented to the Department that the revised pricing range of $13 to $15 per share is appropriate under current market conditions and will enable the Company to successfully complete the IPO. In reaching this conclusion, MetLife and the Company Financial Advisers examined other alternatives, including, among others, delaying the IPO and reducing the size of the offering. MetLife determined that the IPO should proceed as scheduled, however, because MetLife believes: (1) that the market conditions for life insurance stocks may not improve from current levels or may even continue to decline; (2) the overall direction of short-term interest rates has been upward, which often has a negative impact on the equity market in general and on financial service stocks in particular; (3) in the opinion of the Company Financial Advisers, any near-term improvement in MetLife's financial performance or life insurance or broader equity market valuations might not translate into a material improvement in MetLife's IPO valuation; (4) reducing the size of the offering would not necessarily result in a meaningful increase in valuation or lead to a higher pricing range and pursuing such alternatives could have an adverse effect on the success of the IPO and/or

trading in the secondary market; and (5) in completing the IPO at this point in time, MetLife would have an acquisition currency which would significantly improve the Company's flexibility and possibilities for growth at the earliest opportunity.

84. Certain members of the public proposed that the Department should require MetLife to be auctioned to the highest bidder. Although Section 7312(d)(1) permits the acquisition of a reorganized insurer by an unrelated entity, it does not require such an acquisition or an auction of the company. Moreover, Section 7312(j) expressly prohibits the Superintendent from disapproving a plan of reorganization for the reason that the insurer selected one of the methods provided for in the statute rather than another.

B. Subscription Rights

85. A domestic mutual life insurance company reorganizing under Method 4 is not required to provide consideration in the form of subscription rights to its eligible policyholders. The Plan does not include subscription rights or alternative methods for policyholders to purchase Common Stock at the IPO Price. MetLife and the Company Financial Advisers submitted that subscription rights: (1) would cause certain institutional investors, whose ownership is necessary to ensure an orderly trading market, to acquire fewer shares of Common Stock; (2) would make the IPO process more expensive as a result of the extra costs of mailing materials to policyholders and handling subscription rights requests; and (3) could result in a loss of value to all policyholders, due to, among other things, the risk of a lower price from a less successful IPO marketing effort.

86. Certain policyholders have stated that the absence of subscription rights under the Plan is unfair. A subscription rights program, however, would add significant complexity, marketing risk, and cost to an IPO that is already among the most complex and largest public offerings in U.S. history. Further, policyholder participation in subscription rights offerings historically has been and is likely to remain very low. The Superintendent concludes that, in the circumstances of the MetLife reorganization, the Plan is fair and equitable to policyholders without the inclusion of a subscription rights program.

C. "Top-up" Mechanism

87. Section 7312 neither contemplates nor prohibits use of a mechanism (commonly referred to as a "top-up") to increase consideration paid to policyholders receiving cash or policy credits in the event of an appreciation in the trading price of the common stock of a reorganized insurer or its new holding company shortly after the IPO. MetLife and the Company Financial Advisers submitted that: (1) a top-up mechanism would benefit policyholders receiving cash or credits only at the expense of policyholders receiving stock; and (2) the top-up mechanism would not be well-received by institutional investors, reducing demand for the IPO of MetLife. They also noted that under the Plan the default form of consideration is stock, so the the great majority of policyholders will have the opportunity to participate in the performance of the Common Stock after the IPO.

88. The Superintendent concludes that, in the circumstances of the MetLife reorganization, the Plan is fair

and equitable to policyholders without inclusion of a top-up mechanism.

D. Other Capital Raising Transaction

89. In the Policyholder Information Booklets, MetLife disclosed that the Board might decide that, because of market conditions, the amount of cash needed to satisfy cash elections, or other factors, it may be in the best interests of the Company and its policyholders to raise capital through one or more Other Capital Raising Transactions at the same time and in addition to the IPO. The Plan provides that the total proceeds raised in all Other Capital Raising Transactions shall not exceed one-third of the combined total proceeds raised in the IPO, the Private Placements, and all such other Transactions. The Plan further provides that if any Other Capital Raising Transactions are undertaken, they may take the form of a public offering of mandatorily-convertible preferred securities, a public offering of convertible preferred securities, or up to $500 million aggregate principal amount of publicly offered debt securities, commercial paper issuances, or bank borrowings, or a combination of such offerings, issuances, and borrowings.

90. In a separate registration statement filed with the SEC on January 21, 2000, MetLife stated its intention to conduct an Other Capital Raising Transaction concurrently with the IPO, in which the MetLife Capital Trust 1, a Delaware business trust (the "Capital Trust") funded by the Holding Company, will issue units (the "Units") to investors in an amount of $1 billion, plus an additional amount if the underwriters exercise their over-allotment option. Each Unit will consist of: (1) a forward purchase

contract (the "Forward Contract") under which the investor agrees to purchase, and the Holding Company agrees to sell, shares of Common Stock approximately three years from the issue date at a premium over the IPO Price, and (2) a preferred security in the Capital Trust (the "Capital Security"), which initially may be held as collateral to secure the obligations of the investor under the Forward Contract. The transaction is structured to maximize the likelihood that ratings agencies will accord the Units a significant level of equity capital treatment. In addition, MetLife advised the Department that the interest payments on the Holding Company debentures used to fund the Capital Trust are expected to be tax deductible to the Holding Company.

91. The Capital Securities are expected to mature five years after the issue date, and will pay quarterly cumulative cash dividends for the first two and three-quarter years following the issue date. On the third anniversary of the issue date, the Holding Company will facilitate a "remarketing" of the Capital Securities, by which investors who have purchased the Units may sell their Capital Securities to fixed income investors for cash, and deliver the cash to MetLife in satisfaction of the Forward Contracts. To ensure that the Capital Securities may be sold at approximately face value, the interest rate on the Capital Securities will be reset to approximate a market rate. In addition, the Holding Company will guarantee, on a subordinated and unsecured basis, dividend and liquidation payments of the Capital Securities. Moreover, under the terms of the Holding Company debentures used to fund the Capital Trust, holders of Capital Securities will have protections that are generally

standard for holders of other corporate preferred securities, including provisions which prevent the declaration or payment of Common Stock dividends if payments on the debentures (which then flow through to the Capital Securities) are deferred.

92. MetLife intends to fund the interest payments to be made on the Capital Securities by a mandatorily convertible capital note (the "Capital Note") issued by MetLife to the Holding Company simultaneously with the IPO, the Private Placements, and the Other Capital Raising Transaction. The interest payment dates of the Capital Note correspond to the payment dates of the Capital Securities, and provide for interest payments from the Company to the Holding Company in amounts equal to the distributions that the Holding Company will pay on the Capital Securities. The Capital Note is not assignable and will mandatorily convert into Company Common Stock on the fifth anniversary of the Plan Effective Date (the effective maturity date of the Capital Securities). In addition, MetLife will not be permitted to make any interest payments on the Capital Note without the approval of the Superintendent if the Company fails to meet the capital requirements provided for in Section 1323.

93. Section 1323 provides that a life insurance company may at any time or from time to time issue capital notes, subject to certain limitations on aggregate principal amount, if the Superintendent approves the terms of such capital notes as not being adverse to the interests of the insurer's policyholders. MetLife has demonstrated to the Department that the aggregate principal amount of the Capital Note is permitted under the terms of Section 1323.

94. MetLife and the Company Financial Advisers have represented that the Other Capital Rating Transaction will: (1) enhance the flexibility of MetLife in the event of difficult equity market conditions and a larger-than-anticipated level of cash elections; (2) enhance the IPO price and reduce IPO execution risk; and (3) enable MetLife to raise additional capital to cash-out a greater number of policyholders, thereby stabilizing the after-market for the Common Stock. The Superintendent has determined that permitting MetLife to conduct the Other Capital Raising Transaction would be in the best interests of the Company and its policyholders for the reasons described above, and that issuance of the Capital Note will not be adverse to the interests of policyholders.

E. Private Placements

95. On March 9, 2000, in response to recent developments in the capital markets, MetLife further amended the Plan to permit the Company to conduct Private Placements of Common Stock concurrently with the IPO. MetLife proposed to sell to each of Credit Suisse Group or an affiliate ("Credit Suisse") and Banco Santander Central Hispano, S.A. or an affiliate ("Banco Santander" and, collectively with Credit Suisse, the "Investors") between a minimum of 1.0% and a maximum of 4.9% (2.0% and 9.8%, in the aggregate) of the outstanding shares of Common Stock (the "Restricted Stock"). The exact number of shares to be sold and purchased will, subject to such minimum and maximum amount, be determined by the Company in its discretion, based on the advice of Goldman, Sachs or such other investment bank that is approved by the Superintendent. In exercising its discretion, the Company will take into consideration the number of orders for the

shares of Common Stock in the IPO, the level of oversubscription, if any, in the IPO, the aggregate demand for the shares in the IPO, the Company's judgment as to the quality of that demand and market conditions generally. The per share price for the shares of Common Stock sold in the Private Placements will be equal to the IPO Price.

96. In connection with the Private Placements, the Investors, the Holding Company, and the Company have entered into standstill agreements (the "Standstill Agreements"), pursuant to which, among other things, the Investors agreed, for a period of five years following the IPO, that the Investors may only increase their aggregate beneficial ownership of Common Stock up to, but no more than, 5.0% of the outstanding shares of Common Stock, subject to the prior approval of the Superintendent. Until the second anniversary of the IPO, neither the Investors nor the Company may amend any provision of the Standstill Agreements without the prior approval of the Superintendent. Thereafter, the Company must notify the Department of any amendment to the Standstill Agreements.

97. In addition, the Investors agreed, for a period of one year following the IPO, not to sell or transfer shares of the Restricted Stock, except to (1) their respective affiliates (who would be [sic] also be subject to the same restrictions described above) or (2) pursuant to a tender or exchange offer recommended by the Board. After the first anniversary of the IPO, the Investors may sell, transfer, or otherwise dispose of their shares of Restricted Stock, provided that, unless such sale is made through a registered public offering or pursuant to a tender or exchange offer to stockholders of the Company, such sale is not knowingly made to any person or group that would

beneficially own more than 4.9% of the voting securities, unless the purchasers agree to substantially the same restrictions on the Restricted Stock as had the Investors. The Investors must notify the Department of any transfer of the Restricted Shares or any consents requested or granted in connection with the restrictions in the Standstill Agreements.

98. The Investors are granted qualified piggyback and demand registration rights, but Trust Beneficiaries holding more than 25,000 Trust Interests have priority with respect to registration rights under any offering pursuant to Section 3.3 (c) (v) of the Plan.

99. According to Goldman, Sachs, the Private Placements: (1) would increase the likelihood of the successful execution of the IPO, assuming that other factors (including, but not limited to, market conditions and the level of demand from public institutional and retail investors for the Common Stock during the marketing of the IPO) remain constant; and (2) would reduce the number of shares to be sold to public investors (improving the likelihood of a successful IPO in comparison to other means available to MetLife, such as, further increasing the size of the Other Capital Raising Transaction, reducing the amount of capital raised to repay debt incurred in connection with the acquisition of GenAmerica, or introducing proration of cash elections of policyholders allocated more than 25,000 shares).

100. Pursuant to Section 10.4 of the Plan and Section 7312(f), the Company is permitted to amend the Plan after the public hearing or the policyholder vote, without a further hearing or vote, unless the Superintendent determines that the amendment is materially disadvantageous to any of the policyholders. The Private Placements are

not materially disadvantageous to any of the policyholders.

101. Because Credit Suisse is a principal involved in the Private Placement, the Department requested MetLife to obtain an additional opinion from an independent investment banking firm as to the fairness of the Plan, taking into account, among other things, the Private Placements. Accordingly, MetLife received an opinion from Merrill Lynch, dated as of March 17, 2000 (the "Merrill Lynch Opinion") which, assuming an IPO Price of not less than $13, concludes that the exchange of the aggregate Policyholders' Membership Interests in MetLife for shares of Company Common Stock (to be exchanged for an equal number of shares of Common Stock and held in the Trust), cash, and Policy Credits in accordance with the Plan is fair from a financial point of view to Eligible Policyholders, taken as a group.

F. Offering and Supervisory Procedures

102. The Plan provides that the final terms of the IPO, the Private Placements, and any Other Capital Raising Transaction will be subject to the approval of the Superintendent, and written confirmation thereof must be delivered to MetLife or its underwriters prior to the IPO. The Plan also requires MetLife and the Holding Company to use their best efforts to ensure that the managing underwriters for the IPO and any Other Capital Raising Transaction conduct the offering process in a manner that is generally consistent with customary practices for similar offerings and afford to the Department and its financial advisers reasonable access to observe the offering process. Goldman, Sachs and CS First Boston will serve as

the managing underwriters for the IPO and the Other Capital Raising Transaction.

103. The Plan provides that MetLife and the Holding Company will not enter into an underwriting agreement until the Department has received written confirmation (the "IPO Letter") from the Company Financial Advisers to the effect that MetLife, the Holding Company, and the underwriters have complied in all material respects with the foregoing requirements concerning the IPO, the Private Placements, and any Other Capital Raising Transaction. In addition, the Holding Company will not enter into a purchase agreement for the Private Placements without the approval of the Superintendent, unless the purchase agreement states that completion of the Private Placements is subject to approval by the Superintendent.

G. Pricing

104. The Plan requires that the final pricing decision on the IPO, the Private Placements, and any Other Capital Raising Transaction be made by pricing committees of the MetLife Board and the board of directors of the Holding Company, subject to ratification by each board. The Plan provides that the majority of the members of the pricing committees will consist of directors who are not officers or employees of MetLife or the Holding Company. In addition, employees, officers, directors of, or legal counsel to any of the underwriters for the IPO or the Other Capital Raising Transaction or any of the Investors are prohibited from serving on the pricing committees. One director of MetLife is "of counsel" for legal counsel to the underwriters, and one director of MetLife serves on

the board of the parent company of CS First Boston. In addition, a director of MetLife was appointed to the board of Goldman, Sachs in February 2000. None of these persons will serve on the pricing committees.

105. The initial members of the pricing committees will consist of Robert H. Benmosche (Chairman), Curtis H. Barnette, William C. Steere, Hugh Price, and Charles Leighton. None of these persons is an employee, officer, director of, or legal counsel to any of the underwriters for the IPO or the Other Capital Raising Transaction or any of the Investors.

106. Members of the public objected to the provisions of the Plan permitting the IPO Price to be determined by pricing committees of the MetLife Board and board of directors of the Holding Company in consultation with Goldman, Sachs and CS First Boston, in their capacity as managing underwriters of the IPO. These objections stated that the directors on the pricing committees might have an incentive to price the Common Stock too low because the options they will receive to buy shares of Common Stock, pursuant to the MetLife, Inc. 2000 Stock Incentive Plan (the "Stock Incentive Plan") and MetLife, Inc. 2000 Directors Stock Plan (the "Directors Stock Plan") proposed by the Company will be more valuable if the stock price is low at the date of grant. However, the officers and directors who serve on the pricing committees will not be eligible to receive stock options until one year after the Plan Effective Date, and then only at the then-current trading price, not the IPO Price. Options may be granted to senior officers only by a board committee consisting exclusively of outside directors. Moreover, officers and directors may not begin to exercise the stock option until two years after the Plan Effective Date.

107. Further, the Company has agreed to follow special procedures for pricing the Private Placements:

(1) any private placement shares will be purchased at the IPO Price;

(2) neither of the Investors may make the decision regarding sales of shares to them, or the number of shares that may be sold to them;

(3) disclosure regarding possible purchases by the Investors will be made in the preliminary prospectus; if sales are made to either of the Investors, they will be made pursuant to written agreements, the terms of which will be disclosed in the final prospectus;

(4) the offering process must be conducted in a manner that is generally consistent with customary practices for similar offerings;

(5) the Superintendent and his financial advisers will observe the offering process;

(6) the Superintendent and his financial advisers must approve all aspects of the IPO, including the price and the terms of any sale to the Investors; and

(7) the pricing committee of the Board of MetLife must approve the IPO Price. No member of that committee may be an employee, officer or director of the Investors and no employee, officer or director of the Investors will be present when the pricing committee makes the final determination of the IPO Price.

108. In addition, the Department requested Blackstone to deliver an opinion, dated as of the closing of the IPO, to the effect that the procedures employed by the

underwriters in conducting the IPO were generally consistent with customary practices for initial public offerings to the extent reasonably comparable to the IPO (the "Blackstone IPO Procedures Opinion").

H. Use of Proceeds

109. The Plan provides that if there is an IPO and one or more Private Placements and Other Capital Raising Transactions, the net proceeds will be:

> (1) contributed to MetLife in an amount equal to the sum of (x) the amount required to be paid by MetLife to fund the payment of cash and crediting of Policy Credits pursuant to Section 7.3 of the Plan, and (y) an amount equal to an amount required to reimburse MetLife for the cash payments to be made by the Canadian branch of MetLife to the holders of policies included in the Canadian business sold to Clarica Life; and
>
> (2) contributed to MetLife in an amount equal to the amount of the fees and expenses incurred by MetLife in connection with the Reorganization.

110. If any additional proceeds are raised in the IPO and one or more Private Placements and Other Capital Raising Transactions, net of underwriting commissions and related expenses, the net proceeds will be:

> (1) retained by the Holding Company in an amount not exceeding $240 million, or such greater amount as the Superintendent may approve, for working capital, payment of dividends on the Common Stock and other general corporate purposes;

(2) retained by the Holding Company in an amount not exceeding $100 million, or such greater amount as the Superintendent may approve, to pay the fees and reimburse the expenses of the Trustee and Custodian; and

(3) to the extent that the net proceeds exceed the amounts described above, or to the extent the net proceeds are not used for the purposes described above, promptly contributed to MetLife by the Holding Company for the general corporate purposes of MetLife and to repay debt incurred in connection with the acquisition of GenAmerica.

111. The use of additional proceeds to provide working capital for and payment of dividends on the Common Stock of the Holding Company, to pay the fees and expenses of the Trustee and Custodian, and to enable the Company to pay down pre-existing debt is necessary to effectuate the capital and trust structure MetLife has proposed and is in the best interests of the Company and its policyholders.

112. As described above, MetLife expects that the proceeds of the IPO, any Private Placements, and any Other Capital Raising Transaction will be sufficient, among other things, to reimburse the Company an estimated $315 million for the payments to be made to the holders of certain Canadian policies issued by MetLife and sold to Clarica Life Insurance Company ("Clarica Life") in July 1998, before MetLife announced its intention to demutualize. As part of that sale, the policyholders of these policies became policyholders of Clarica Life by operation of Canadian law; they are no longer MetLife policyholders and are not entitled as policyholders to receive consideration under the Plan. However, as a result

of a commitment made by MetLife in connection with obtaining Canadian regulatory approval of the sale (the "Canadian Undertaking"), MetLife agreed that its Canadian branch would make cash payments to the holders of the transferred Canadian policies, in the event of a demutualization of MetLife. According to the terms of the Canadian Undertaking, the payments will be determined in a manner that is consistent with the treatment of, and fair and equitable to, Eligible Policyholders. It is appropriate for MetLife to raise proceeds in the IPO to discharge this pre-existing obligation, and it will not be unfairly dilutive to the interests of the policyholders of the Company to do so.

VII. Eligibility and Policyholder Consideration

113. Consistent with Section 7312(e)(3), the Plan provides that the policyholders eligible to vote on the Plan and receive consideration if the Plan becomes effective are those policyholders who were the owners on September 28, 1999 – the date the Board of MetLife adopted the Plan (the "Board Adoption Date") – of one or more Policies deemed to be in effect on that date, based on the records of the Company and as determined in accordance with certain rules contained in the Plan. The Plan also provides that a Policy will not be deemed to have matured by death as of any date unless notice of such death has been received by MetLife on or prior to that date, as shown on the records of the Company.

A. Group Policies and Contracts

114. In general, the Plan provides that the Owner of a Policy that is a group insurance policy or group annuity

contract is the Person specified in the policy or contract as the policy or contract holder. For certain group policies and contracts, however, persons other than the named policyholder are treated as the Owners for purposes of the Plan. For certain group life and long-term disability insurance policies, each certificate issued to any person who exercised a portability, continuation, or paid-up insurance option is treated as a separate Policy and the certificate holder is treated as the Owner. For group insurance policies or group annuity contracts, issued or deemed issued to a trust established by or on behalf of MetLife, that provide coverage to the employees, participants, or members of more than one employer or entity, each certificate issued under the policy or contract is treated as a separate Policy and the certificate holder is treated as the Owner. For group annuity contracts, issued or deemed issued to a trust established by or on behalf of MetLife each certificate issued under the contract that is qualified or intended to be qualified as an individual retirement account, a tax-sheltered annuity, or a tax-deferred annuity is treated as a separate Policy and the certificate holder is treated as the Owner. For group annuity contracts, issued to brokers or other intermediaries as agents for certain employers, plans, or entities, each participation interest is treated as a separate Policy and the participating employer, plan, or entity is treated as the Owner.

115. For these group policies and contracts, MetLife has represented to the Department that (1) exercise of the coverage options causes the certificate holders to cease to be treated by the Company, for purposes of experience calculation, premium collection, or other aspects of policy administration, as part of the group policy, or (2) the named policyholder functions only as a passive vehicle for

holding the group policy, whereas the certificate holders or participating employers, plans, or entities are effectively treated by the Company as, and exercise rights consistent with being, individual policy owners.

B. MetLife as Policyholder

116. To avoid any conflict of interest, the Plan provides that if the Company or any of its subsidiaries in which it owns a majority interest owns a Policy otherwise eligible for consideration, no consideration will be allocated or paid with respect to such Policy, unless the consideration is required to be used in whole or in part for the benefit of participants or employees who are covered under a MetLife ERISA Plan funded by that Policy.

117. With respect to any MetLife ERISA Plans that are Eligible Policyholders, the Plan requires the Company to retain an independent fiduciary to represent such Plans in connection with the demutualization. By letter agreement dated July 20, 1999, MetLife retained State Street Bank to serve as the independent fiduciary. Subject to certain conditions provided for in the Plan and the exemption MetLife obtained from the Department of Labor, State Street Bank in its capacity as independent fiduciary for the MetLife ERISA Plans, voted on the Plan, made the election for the MetLife ERISA Plans as to the form of consideration to be received under the Plan, and will confirm that the consideration to be received is held in a manner that meets the investment objectives and liquidity needs of the MetLife ERISA Plans.

C. MetLife Subsidiaries

118. According to the Plan, the owners of policies issued by the wholly-owned subsidiaries of MetLife – including Metropolitan Insurance and Annuity Company, Metropolitan Tower Life Insurance Company New England Life Insurance Company, Security First Life Insurance Company, Texas Life Insurance Company, and Metropolitan Property and Casualty Insurance Company – are not eligible to vote or receive consideration in the reorganization of MetLife, because those subsidiaries are already stock insurance companies and the provisions of Section 7312 apply only to domestic mutual life insurers converting to stock form. For the same reason, policyholders of the insurance company subsidiaries of GenAmerica Corporation, which MetLife acquired as of January 6, 2000, are not entitled to participate in the reorganization of MetLife, because those insurers, now MetLife subsidiaries, are already stock companies.

D. Amount and Allocation of Consideration

119. Pursuant to the Plan, Eligible Policyholders will receive shares of Company Common Stock (to be exchanged for an equal number of shares of Common Stock and held in the Trust), cash, or Policy Credits in exchange for the surrender of their Policyholders' Membership Interests. Eligible Policyholders who are not required by the terms of the Plan to receive cash or Policy Credits will receive consideration in the form of stock (to be held in the Trust), unless they elect to receive cash. MetLife has represented to the Department that the default to stock is intended to encourage the maximum number of Eligible Policyholders to continue to participate in the ownership of MetLife and to benefit from the appreciation, if any, of

the Common Stock after the IPO is completed. Regardless of the form in which the consideration will be paid, the amount of consideration will be based upon the number of shares of Company Common Stock allocated to each Eligible Policyholder under the terms of the Plan. Consideration paid in the form of cash or Policy Credits will be calculated by multiplying the total number of shares allocated to each Eligible Policyholder by the IPO Price.

120. The payment of cash and the crediting of Policy Credits will be completed no later than sixty days after the Plan Effective Date, unless the Superintendent approves a later period. All consideration to be paid in the form of shares of Company Common Stock will be issued to the Trust (and then exchanged for an equal number of shares of Common Stock) to be held on behalf of the Trust Beneficiaries upon the Plan Effective Date.

121. A total of 700 million shares of Company Common Stock, representing 100% of the equity ownership of the Company prior to reorganization, will be allocated to Eligible Policyholders as consideration for the surrender of their Policyholders' Membership Interests. Of this amount, approximately 493.5 million shares will be issued to the Trust (and exchanged for an equal number of shares of Common Stock), and the remainder will be paid out in the form of cash and policy credits.

122. Each Eligible Policyholder will be allocated a fixed component of consideration equal to ten shares of Company Common Stock (subject to adjustment as provided in the Plan), the aggregate of which will represent just under 16% of the 700 million shares. In addition, each Owner of a Participating Policy may be allocated a variable component of consideration, representing in the

aggregate the remainder of the 700 million shares. For purposes of the Plan, a Participating Policy is defined as a Policy that: (1) provides for the right to participate in the divisible surplus of the Company if and to the extent that dividends are apportioned on the Policy; (2) does not by its terms provide that it is non-participating; or (3) is a supplementary contract, unless the supplementary contract (i) provides by its terms that it is non-participating and (ii) was assumed by assumption reinsurance by the Company.

123. Each Eligible Policyholder will be allocated a single fixed component of consideration regardless of the number or face amount of the Policies such Policyholder owns. Prior to demutualization, each policyholder was entitled to a single vote in the election of directors to the Board, regardless of the number or face amount of the Policies such policyholder owns. Metlife has represented to the Department that the fixed component of consideration is primarily intended to compensate Eligible Policyholders for the extinguishment of their right to vote, but also to ensure that all Eligible Policyholders will receive at least a minimum amount of consideration, since not every Eligible Policyholder will be allocated a variable component of consideration.

124. Eligible Policyholders owning Participating Policies may also be allocated a variable component of consideration that takes into account, among other things, the estimated past and expected future contribution to the surplus of MetLife of all of the Participating Policies such Policyholder owns. If the contribution of each of the Participating Policies owned by an Eligible Policyholder is negative or zero, the Policyholder will be allocated only the

fixed component of consideration. Allocation of the aggregate variable component of consideration to each Participating Policy is governed by the Plan and the Actuarial Contribution Memorandum.

125. Several policyholders objected that information about the number of shares allocated to each policyholder was not available from MetLife until one week before the deadline for voting on the Plan and that the value of the consideration allocated to each policyholder was not available prior to the deadline at all. Share allocation information, however, is not required to be provided to policyholders under Section 7312, and in prior reorganizations under the statute, such information has not been provided. In the notice of public hearing and policyholder vote mailed to policyholders at least 30 days prior to the hearing and 44 days prior to the deadline for voting, MetLife advised Eligible Policyholders that share allocation information would be available beginning on January 30, 2000, one week before the policyholder vote.

E. Opinions of Advisers

126. MetLife received and submitted to the Department an opinion dated November 16, 1999 from Kenneth M. Beck, a principal with PwC (the "Beck Opinion"), stating that the allocation of consideration to Eligible Policyholders as set forth in the Plan is fair and equitable to the policyholders of MetLife as required by Section 7312. The Beck Opinion states, in relevant part:

> [t]he distribution described in Article VII of the Plan takes into account the ratio of the positive

> sum of the estimated past and future contributions to MetLife surplus, if any, of each Participating Policy and Contract owned by each Eligible Policyholder to the total of all such positive sums. . . . Under Section 7312 of the New York Insurance law, there is no specific guidance given for the allocation of consideration in a "Method Four" reorganization, but policyholder contributions are specifically identified as an acceptable approach to the allocation of consideration under other methods of reorganization within this section of the law. In addition, the contribution method is recognized in the actuarial literature as an appropriate method. I therefore find that the use of "actuarial contribution" as the principal basis of allocation is fair and equitable.

127. The actuarial consultants of the Department, M&R, reviewed the Actuarial Contribution Memorandum and the Beck Opinion and, based upon the independent analysis of M&R, concurred with the Beck Opinion. In addition, Daniel J. McCarthy, a consulting actuary with M&R, issued an opinion (the "McCarthy Opinion") to the Department dated January 24, 2000, and confirmed as revised on March 30, 2000, stating that the methods set forth in the Plan and the Actuarial Contribution Memorandum allocate the consideration to be given to policyholders among policyholders in a fair and equitable manner. The McCarthy Opinion was based on a comparison of the methods used in the allocation to those that have been used in comparable demutualizations and an examination of relevant actuarial literature that describes recommended methods of allocation and sets forth underlying principles.

128. Some members of the public suggested that the use of the "historic-plus" methodology (which takes prospective, as well as historic, contributions to surplus into account) is inappropriate and, among other things, discriminates against older, smaller individual participating policies of the Company. Both PwC and M&R, agree, however that the "historic-plus" methodology is widely-recognized in actuarial literature as an appropriate measure for allocating the variable component of consideration, because it is based on a concept of the market value of the company – a value derived from the capital and surplus of the company on the date of conversion as well as its future earnings potential. The Report of the Society of Actuaries Task Force (1987) states that the "historic-only" approach is, in contrast, "not a useful method and, in addition, the Task Force does not believe that it produces a theoretically correct measure of policyholder contributions, in the aggregate or policy-by-policy." The "historic-plus" methodology is consistent with Section 7312, which does not favor one methodology over another, but instead requires that consideration be allocated to policyholders in a fair and equitable manner. Further, every major U.S. life insurance company demutualization since 1990 has used the "historic-plus" approach. Under the "historic-plus" method, all policyholders alike are subject to the same standard with respect to the measurement of this contribution to capital and surplus. The "historic-plus" methodology thus does not discriminate in favor of large group policyholders.

129. In addition to the Merrill Lynch Opinion, MetLife received separate opinions from Goldman Sachs and CS First Boston, each dated November 16, 1999 (the "Company Financial Advisers Opinions"), that the

exchange of the aggregate Policyholders' Membership Interests in MetLife for shares of Company Common Stock (to be exchanged for an equal number of shares of Common Stock and held in the Trust), cash, and Policy Credits in accordance with the Plan is fair from a financial point of view to policyholders who are Eligible Policyholders taken as a group. Goldman Sachs, CS First Boston, and Merrill Lynch will reaffirm their opinions as of the Plan Effective Date, taking into account any Other Capital Raising Transactions, the final IPO Price, and the Private Placements. It is a condition to the approval of the Plan that MetLife submits updated opinions from Goldman Sachs, CS First Boson, and Merrill Lynch as of the Plan Effective Date.

130. An objection has been raised to the fact that Goldman, Sachs and CS First Boston are serving both as underwriters to the transaction and as financial advisers to MetLife. Counsel to the Company Financial Advisers has indicated that it is common for investment firms acting as underwriters to provide financial advice and services, such as rendering fairness opinions. As further protection for policyholders, in no instance has the Department relied entirely on the opinions issued by the Company Financial Advisers in making its own determinations, but rather has reviewed the entire record as well as relied upon the advice of its own Consultants.

131. The Department received an opinion from its investment banking consultant, Blackstone, dated March 10, 2000 (the "Blackstone Fairness Opinion"), to the effect that the Plan, taken as a whole, is fair to the Eligible Policyholders, as a group, from a financial point of view. Blackstone performed various financial analyses and reviewed various financial materials relating to MetLife,

the Plan, and the Reorganization, as it deemed appropriate. Among other things, Blackstone reviewed the Policyholder Information Booklets (including the exhibits, financial statements, and opinions), the preliminary prospectuses prepared in connection with the IPO and the Other Capital Raising Transaction, the Stock Purchase Agreement between the Holding Company and the Investors, MetLife's strategic business plan for 2001-2002, and annual statements as filed by MetLife with the Department. In reliance upon, among other things, the Blackstone Fairness Opinion, the Department has determined that the Plan is fair and equitable to the policyholders from a financial point of view.

F. Policyholders Required to Receive Policy Credits

132. The Plan provides that certain Eligible Policyholders are required to receive their consideration in the form of Policy Credits, which are an adjustment of policy values. These Policyholders include the owners of:

(1) individual retirement annuities or tax sheltered annuities, in each case issued to an individual owner;

(2) individual annuity contracts issued under tax-qualified plans directly to the plan participant;

(3) individual life insurance policies issued under taxqualified plans directly to the plan participant; and

(4) life or health insurance funding accounts or guaranteed life insurance funding accounts.

These policyholders are required to receive Policy Credits in order to avoid unfavorable tax consequences to them that would result from the receipt of consideration in the form of cash or stock.

133. The value of the Policy Credits to be provided under the Plan will equal the number of shares allocated to the Eligible Policyholder multiplied by the IPO Price. The specific form of the Policy Credits to be provided under the Plan will be one of the following, depending on the Policy:

(1) an increase in accumulation value, to which MetLife will apply no sales, surrender, or similar charges, or that will be further increased in value to offset any of these charges, under a Policy that is a deferred annuity;

(2) an increase in the amount of the payments distributed, under a Policy that is in the course of annuity payments;

(3) insurance or dividends with interest, as appropriate (depending upon whether the additional insurance option or the dividends with interest option has been selected with respect to the underlying Policy, provided that dividends with interest will apply where an option other than additional insurance or dividends with interest has been selected), under a Policy that is a life insurance policy; or

(4) an increase in the retired lives reserve, under a Policy that is a life or health insurance funding account or a guaranteed life insurance funding account.

G. Policyholders Required to Receive Cash

134. The Plan provides that other Eligible Policyholders are required to receive their consideration in the form of cash. These Policyholders include:

(1) policyholders whose mailing addresses are located outside the United States;

(2) holders of industrial life Policies in reduced paid-up status where MetLife's records do not reveal a current mailing address;

(3) policyholders for whom MetLife makes a good faith determination, subject to the approval of the Superintendent, that it would not be reasonably feasible or appropriate to provide compensation in the form of Common Stock; and

(4) group Eligible Policyholders that are the owners of taxqualified individual retirement annuities or tax sheltered annuities which elect to receive cash instead of Common Stock for those particular Policies.

135. MetLife has approximately 1.1 million policyholders for whom current addresses cannot be determined. Approximately 800,000 of these policyholders are holders of industrial life Policies for which MetLife is no longer collecting premiums. From 1988 through the current reorganization process, MetLife has made various efforts and expended approximately $20 million to locate these policyholders. These efforts included, among other things, a "Family Reunion Program" consisting of a direct mail campaign, print advertisements containing a special 800 telephone number, and special communication and promotional events held throughout the United States.

136. In addition, after MetLife announced its intention to demutualize, the Company conducted a targeted advertising campaign, employed a private address search service, and used search services provided by the United States Internal Revenue Service ("IRS") and by various individual states. Through the use of these search services, MetLife located approximately 3,000 Eligible Policyholders previously thought to be "lost." Although these 3,000 Eligible Policyholders did not receive notice of the proposed demutualization more than 30 days prior to the dates of the public hearing and the policyholder vote and were unable to vote on the Plan, MetLife provided them with the same packet of materials mailed to all other Eligible Policyholders and gave them the choice to elect to receive their consideration in cash (to the extent applicable). Their votes could not have affected the outcome of the voting overall and, therefore, their exclusion from this process did not render the Plan unfair or inequitable.

137. The Department and its Consultants have considered the efforts of MetLife to locate its "lost" policyholders, as well as the costs and benefits of requiring these and certain other classes of policyholders to receive consideration in the form of cash. For example, allocating Common Stock to missing policyholders would result in "dead shares" being held in the Trust potentially affecting the outcome of votes on any Beneficiary Consent Matter. In addition, policyholders whose mailing addresses are located outside of the United States could receive Common Stock only if MetLife were to register the Common Stock in the country of residence of the policyholder, which could result in a significant cost to MetLife and delay the demutualization. For these reasons, paying cash to these groups of policyholders is fair and equitable.

H. Cash Election

138. Pursuant to the Plan, Eligible Policyholders who are not required to receive cash or Policy Credits will automatically receive shares of Common Stock (to be held in the Trust), unless they elected, by returning an election card to MetLife by February 7, 2000, to receive consideration in the form of cash. If the proceeds from the IPO, the Private Placements, and any Other Capital Raising Transaction, however, are not sufficient to fund the payment of cash to all Eligible Policyholders electing to receive cash, the Plan permits MetLife to pay cash to Eligible Policyholders as follows:

> (1) each individual Eligible Policyholder electing to receive cash will receive consideration in the form of cash;
>
> (2) each group Eligible Policyholder electing to receive cash and not allocated more than 25,000 shares will receive consideration in the form of cash; and
>
> (3) each group Eligible Policyholder electing to receive cash and allocated more than 25,000 shares will receive consideration in the form of (a) cash, with respect to the first 25,000 shares allocated, and (b) either shares of Common Stock (to be held in the Trust) or a combination of cash and shares of Common Stock (to be held in the Trust), with respect to the remaining allocated shares. Cash will be allocated on a pro rata basis, as specified in the Plan.

The proration provisions outlined above would not apply to any group Eligible Policyholder that is an owner of an individual retirement annuity or a tax sheltered annuity

who elects to receive cash instead of Common Stock (to be held in the Trust), but only with respect to that policy.

139. The Company Financial Advisers have submitted that a limitation on cash-outs to group Eligible Policyholders allocated more than 25,000 shares would benefit all policyholders as a whole. Among other things, such limitations would: (1) enhance the flexibility of MetLife in the event of difficult market conditions and/or a larger than anticipated level of cash elections; (2) enhance the IPO Price and reduce IPO execution risk; and (3) result in a greater administrative expense savings for the Trust by cashing-out individual and small group Eligible Policyholders first. In addition, policyholders would be able to receive cash for at least 25,000 shares and would, subject to certain trading restrictions, be able to sell their shares commission-free after the IPO in the Purchase and Sale Program.

140. Pursuant to the Plan, the Holding Company may offer to group Eligible Policyholders holding more than 25,000 shares that elect to receive cash, but do not receive cash for all of their shares because limited funds are available for that purpose, registration rights to include their Trust Shares in an underwritten public offering of the Common Stock by the Holding Company during the two-year period following the Plan Effective Date. Each Trust Beneficiary could then elect to include some or all of its Trust Shares in the offering. The Holding Company would include all Trust Shares desired to be sold in the offering, unless, based on the advice of its financial advisers, the board of directors of the Holding Company determines that including all Trust Shares would have an adverse effect on the price, timing, or distribution of the offering. Those Trust Shares, if any, the inclusion of which

would not have an adverse effect, would be included. The Holding Company would prorate the number of Trust Shares that each Trust Beneficiary may include, as provided in the Plan. The Holding Company would bear the costs of conducting the offering, including the fees and expenses of the underwriters for the offering.

141. The Company has advised the Department, however, that it expects to be able to pay cash to all policyholders who submitted timely cash elections and not to prorate any cash requests.

VIII. The Closed Block

142. Section 7312(d) permits a domestic mutual life insurance company converting to stock form to operate its participating policies and contracts in force on the effective date of the reorganization as a "closed block," for the exclusive benefit of those policies and contracts and for dividend purposes only. If a closed block is used, the statute requires the insurer to fund it with assets in an amount which, together with anticipated revenue from the participating business, is reasonably expected to be sufficient to support the business, including, but not limited to, provisions for payment of claims, expenses, and taxes, and to provide for continuation of current payable dividend scales, if the experience underlying such scales continues, and for appropriate adjustments in such scales if the experience changes.

143. Section 7312(d) provides that if a closed block is used, the assets funding the closed block must be determined as of the December 31 preceding the date on which the plan of reorganization was adopted (the "Statement

Date") and brought forward to the effective date of the reorganization, using methods which would have been used had the closed block been established on the statement date with appropriate recognition of new issues. The statute also provides that none of the assets funding the closed block, including the revenue therefrom, may revert to the benefit of the stockholders of the reorganized insurer.

A. Establishment of the Closed Block

144. In accordance with Section 7312(d), MetLife will establish a Closed Block to ensure that the reasonable dividend expectations of policyholders who own Policies included in the Closed Block Business will be met. The Closed Block Business will generally consist of all classes of United States dollar denominated individual life insurance policies for which MetLife had a divided scale in effect for 1999, but only to the extent that such Policies are in force on any date between the Statement Date, December 31, 1998, and the Plan Effective Date. Company assets totaling $ 31.9 billion – an amount sufficient to support the Closed Block Business, as determined in the Closed Block Memorandum – will be allocated to the Closed Block as of December 31, 1998 and brought forward to the Plan Effective Date in accordance with the Plan. The Department and M&R have determined that the Closed Block funding is reasonable and sufficient for purposes of Section 7312(d)(5)(B), which provides that "such closed block shall be allocated assets of the mutual life insurer in an amount which together with anticipated revenue from such business is reasonably expected to be sufficient to support such business including, but not limited to, provisions for payment of claims, expenses and taxes, and

to provide for continuation of current payable dividend scales, if the experience underlying such scales continues and for appropriate adjustments in such scales if the experience changes."

145. At the public hearing, a member of the public suggested that the presence of a significant number of lost policyholders (primarily with industrial policies) could adversely affect the closed block calculations because the actual mortality for those policies may vary from the assumed mortality, and MetLife's estimate for claims incurred but not reported would be too low, since they did not reflect those lost policyholders who were already dead. MetLife has represented to the Department that the actual insurance exposure of Closed Block policies for which MetLife has no current addresses is relatively small, so any variations from assumed mortality will have no material effect on the Closed Block. Further, the Closed Block Memorandum, Schedule 2 to the Plan, provides that death claims on Closed Block policies which were incurred prior to the Statement Date (December 31, 1998), but reported after that date, will be paid from assets outside the Closed Block. Therefore, the existence of these lost policyholders should not adversely affect the dividend expectations of the Closed Block policyholders. Based on their own analysis, M&R and the Department concur in this conclusion.

146. A policyholder has suggested that the assumed reinvestment rates used in funding the Closed Block are not supported by current experience. MetLife, however, has represented to the Department that the reinvestment rates are based on current dividend calculation methodologies and current experience. The development of the reinvestment rates has been reviewed extensively by PwC

in the development of the Beck Opinion and by M&R in the development of the McCarthy Opinion. Both PwC and M&R believe that the rates are consistent with experience underlying the current dividend scale.

147. Certain policyholders objected that Closed Block funding is based on a single year's dividend experience, 1999, rather than the previous four years' dividend experience and that prior years' dividend levels should have been included in the disclosure materials. New York Insurance Law, however, does not require that multiple years' dividend experience be used to calculate the funding of the Closed Block, but simply that the funding be based on "current payable dividend scales." § 7312(d)(5)(B). Further, both PwC and M&R reviewed the dividend actions taken by MetLife in the five-year period 1995-1999, as well as the elements of financial experience underlying those actions, and determined that the practices, rates, and assumptions underlying the 1999 dividend scales were consistent with those used in prior years. Because the dividend practices in 1999 were consistent with prior years' dividend practices, it was unnecessary for MetLife to provide an actuarial opinion based on multiple years' dividend experience or to disclose prior years' dividend levels in the Policyholder Information Booklets.

B. Operation of the Closed Block

148. After the Statement Date, insurance and investment cash flows from operations of the Closed Block Business, the assets funding the Closed Block, the cash allocated to the Closed Block, and, as described in the Closed Block Memorandum, all other assets acquired by or allocated to the Closed Block will be received by or

withdrawn from the Closed Block in accordance with the principles set forth in the Plan.

149. The Closed Block will be charged for only the level of expenses that has been provided for in the funding of the Closed Block, as described in the Plan. Since expenses are under the control of the Company and because their allocation among different businesses is a discretionary matter, charging the Closed Block only with what was provided for in the funding insulates the policyholders from cost increases, and allocation changes. Although policyholders will not benefit from future expense savings, they are protected from the risk of future expense increases arising from, among other things: (1) an increase in unit costs because of high lapse rates and a resulting smaller amount of business in force; (2) poor expense management by the Company; or (3) a reallocation of overhead expenses among lines of business. The Department notes that the major expense associated with policies, the cost of policy acquisition, has already been incurred at the time the policy was issued, so that any future changes in unit costs arising for other reasons would not be likely to have a significant impact on the dividend scales.

150. None of the assets allocated to the Closed Block, including the revenue therefrom, will revert to the benefit of the Holding Company or its stockholders. The Closed Block will continue in effect until the last Policy in the Closed Block is no longer In Force.

151. The assets in the Closed Block will be managed and reinvested in accordance with the Plan and the Closed Block Investment Guidelines filed with and approved in advance by the Superintendent. Generally, the Closed

Block assets may be reinvested in the same asset classes that are allowed for investments made on behalf of the general account of MetLife. Except in certain limited circumstances, the Closed Block may not invest directly or indirectly in (1) real property if it can be reasonably known by MetLife that the Company or a Company Affiliate occupies any space in that property, or (2) debt, common or preferred stock, or other equity securities issued by MetLife or any Company Affiliate.

152. The investment policy of the Closed Block will be subject to an annual review completed by a qualified actuary and a qualified investment professional, appointed by the Board of MetLife. The actuary will present an annual opinion on certain investment aspects of the Closed Block and a report on Closed Block investment activities to the Board. Copies of the opinion and the report will be submitted to the Superintendent. In addition, after the Plan Effective Date, MetLife will submit supplemental financial and investment schedules for the Closed Block with each of its annual financial statements.

153. One policyholder objected to the inclusion of debt securities issued by Exeter Reinsurance Company ("Exeter"), a subsidiary of MetLife, among the assets with which the Closed Block initially was funded. MetLife agreed to remove the Exeter bonds and any other obligations of affiliates from the Closed Block and replace them with securities of equal value from an unaffiliated issuer. Section 8.2(b) of the Plan provides that new investments acquired after the Statement Date on behalf of the Closed Block shall not include securities of entities controlled by MetLife, and the Closed Block Investment Guidelines referenced by the Plan provide that the initial Closed Block assets be chosen by the same criteria.

C. Policy Benefits and Dividends

154. The establishment and operation of the Closed Block will not modify or amend the provisions of the Policies included therein. MetLife will continue to pay guaranteed benefits under all Policies in accordance with their terms, including the Policies included in the Closed Block. If the assets allocated to the Closed Block, the investment cash flows from those assets, and the revenues from the Policies included in the Closed Block prove to be insufficient to pay the benefits guaranteed under the Policies included in the Closed Block, MetLife will be required to make such payments from its general funds.

155. Similarly, all Participating Policies that are part of the Closed Block Business will continue to be Participating Policies eligible for dividends. Dividends will be apportioned annually by the Board or a Board committee in accordance with applicable law and consistent with the objective of minimizing tontine effects and exhausting the assets of the Closed Block with the final payment made to the last Policy included in the Closed Block. Dividends may vary from time to time – as they do currently – reflecting changes in investment income, mortality, persistency, and other experience factors. To the extent that, over time, cash flows from the assets allocated to the Closed Block and claims and other experience relating to the Closed Block Business are, in the aggregate, more or less favorable than assumed in establishing the Closed Block, total dividends paid to Closed Block policyholders in the future may be greater or less than the total dividends that would have been paid to these policyholders if the policyholder dividend scales in effect for 1999 had been continued. Although dividends are not guaranteed, MetLife could choose to support the payment of dividends on

Policies in the Closed Block from the general funds of the Company.

156. The Plan requires MetLife to submit to the Superintendent every five years following the Plan Effective Dan an opinion of an independent actuary as to the compliance by the Company with Plan provisions for setting dividend scales on Closed Block Policies.

D. The TNE Segment of the Closed Block

157. The Closed Block funding includes certain assets allocated for the exclusive benefit of the participating policyholders of The New England Mutual Life Insurance Company ("TNE") who became MetLife policyholders when TNE was merged into MetLife in 1996. At the time of the merger, the Massachusetts Division of Insurance required that MetLife establish a separate segment in its general account for the purposes of determining the policy dividends payable to these former TNE policyholders. The segment consisted of the assets backing those policies, plus an additional amount of funds (the "Additional Assets") which totaled $156.5 million as of the Statement Date. The merger documents mailed to TNE and MetLife policyholders stated that it was MetLife's intention, over time, to base dividends on these TNE policies not only on the net income on the assets in the TNE policy segment, but also to include an amount representing (on an after tax basis) the value of the Additional Assets.

158. According to the Closed Block Memorandum, the amount of the Closed Block funding is sufficient: (1) to permit the former TNE policyholders included in the Closed Block to continue to receive dividends based on the currently payable dividend scale (the 1999 dividend scale)

as long as current experience continues; and (2) simultaneously to continue the reasonable dividend expectations of the MetLife policyholders included in the Closed Block. M&R has concurred with these projections. Accordingly, the allocation of Additional Assets to the TNE segment within the Closed Block is fair and equitable to the policyholders of MetLife included in the Closed Block and to the policyholders of the Company as a whole.

E. Other Participating Policies

159. Certain classes of individual Participating Policies will be excluded from the Closed Block but will remain eligible to receive dividends in accordance with their terms. In addition, the Plan requires the Company to establish baseline financial objectives for each such class of Policies, a basis for measuring deviations from such objectives, and a method by which such deviations will be reflected in the financial treatment of Policies within each such class. The Plan also establishes procedures by which the Superintendent will monitor the compliance of MetLife with the requirements applicable to these Participating Policies excluded from the Closed Block.

F. Actuarial Opinions

160. The Beck Opinion, which MetLife received and submitted to the Department, states that:

> (1) the objective of the Closed Block as being for the exclusive benefit of the policies included therein for policyholder dividend purposes only as set forth in Article VII of the Plan is consistent with Section 7312;

(2) the operations of the Closed Block as set forth in Article VIII of the Plan and described in the Closed Block Memorandum, including the determination of the required initial funding and the manner in which cash flows are charged and credited to the Closed Block, are consistent with the objectives of the Closed Block;

(3) MetLife's assets set aside as of December 31, 1998 (including subsequent adjustments as provided for in the Closed Block Memorandum) to establish the Closed Block, as set forth in Article VIII of the Plan (including the Closed Block Memorandum) are adequate because they are expected to produce cash flows which, together with anticipated revenues from the Closed Block Business, are reasonably expected to be sufficient to support the Closed Block Business including, but not limited to, provisions for the payment of claims and certain expenses and taxes, and to provide for continuation of dividend scales payable in 1999, if the experience underlying such scales continues; and

(4) the Plan is consistent with the objective of the Closed Block as it provides a vehicle for MetLife's management to make appropriate adjustments to future dividend scales, where necessary, if the underlying experience changes from the experience underlying such dividend scales.

161. The Department also received an opinion from Daniel J. McCarthy, a consulting actuary with M&R, dated January 24, 2000, certifying, in accordance with Section 7312(h)(3), that the assets allocated to the Closed Block as of January 1, 1999 (including provision for subsequent adjustments) are in an amount which together with anticipated revenue from the Closed Block Business

is reasonably expected to be sufficient to support such business including, but not limited to, provisions for the payment of claims, certain expenses and taxes, and to provide for continuation of dividend scales payable in 1999 if the experience underlying such scales continues, and for appropriate adjustment in such scales if the experience changes. In arriving at this opinion, Mr. McCarthy relied on a model, developed by M&R staff under his direction, of the business to be included in the Closed Block, as well as other actuarial analyses and projections performed by him or under his direction.

IX. Restrictions on Acquisition of Securities By MetLife Personnel

162. Section 7312(w) provides that prior to and for a period of five years following the date when the distribution of consideration to policyholders in exchange for their membership interests is completed, no officer, director, or employee of the mutual insurer or the reorganized insurer, including family members and their spouses, may directly or indirectly offer to acquire or acquire in any manner the beneficial ownership of any securities of the reorganized insurer or its new holding company unless the acquisition is: (A) made pursuant to a stock option plan approved by the Superintendent; (B) made pursuant to the plan of reorganization; (C) made by employees, including their family members and their spouses, from a broker or dealer registered with the SEC at the then-quoted prices on the date of purchase; or (D) made by officers or directors, including their family members and their spouses, at least two years after the initial public offering from a broker or dealer registered with the SEC at the then-quoted prices on the date of purchase.

163. The Plan incorporates these restrictions. From the Adoption Date until the Plan Effective Date and thereafter until the fifth anniversary of the Plan Effective Date, no officer, director, or employee of MetLife, the Holding Company, or any Company Affiliate – defined as an individual or entity controlling, controlled by, or under common control with the MetLife or Holding Company within the meaning of Section 1501 – including their family members and spouses, may directly or indirectly offer to acquire or acquire in any manner the beneficial ownership of securities of MetLife or the Holding Company except for acquisitions made: (1) pursuant to the Stock Incentive Plan and the Directors Stock Plan approved by the Superintendent or pursuant to certain additional equity compensation plans or arrangements (the "Other Stock-Based Compensation Plans") identified in Schedule 3(c) to the Plan; (2) as an Eligible Policyholder pursuant to the Plan (provided that acquisitions made through the Purchase and Sale Program are subject to clauses (3) and (4) below); (3) by non-officer employees of MetLife, the Holding Company, or any Company Affiliate, including their family members and their spouses, through the Purchase and Sale Program or from a broker or dealer registered with the SEC at the then-quoted prices on the date of purchase; or (4) by officers or directors of MetLife, the Holding Company, or any Company Affiliate, including their family members and their spouses, at least two years after the Plan Effective Date through the Purchase and Sale Program or from a broker or dealer registered with the SEC at the then-quoted prices on the date of purchase.

A. The Stock Incentive Plan

164. The Stock Incentive Plan permits the Compensation Committee of the board of directors of the Holding Company to grant stock options for the purchase of Common Stock to officers (including officers who are directors), employees, and insurance agents of MetLife, the Holding Company, and their affiliates after the first anniversary of the Plan Effective Date.

165. The Stock Incentive Plan provides that the options will vest in three equal installments on the first three anniversaries of the date of the grant, provided, however, that no option may be exercised prior to the second anniversary of the Plan Effective Date. Options granted under the Stock Incentive Plan are also subject to special vesting provisions following a recipient's death, disability, approved retirement, or following a divestiture of business or change of control.

166. The total number of shares of Common Stock that may be subject to options granted under the Stock Incentive Plan cannot exceed 5% of the total number of shares of Common Stock immediately outstanding after the Plan Effective Date, reduced by (1) the number of shares of Common Stock issuable pursuant to any stock options granted under the Directors Stock Plan, and (2) shares that may be issued pursuant to certain non-qualified compensation plans under Schedule 3(c) of the Plan. The maximum number of shares which may be subject to award under the Stock Incentive Plan may not exceed 60% of the shares available under the Stock Incentive Plan prior to the second anniversary of the Plan Effective Date, 80% prior to the third anniversary of the

Plan Effective Date, and 100% prior to the fourth anniversary of the Plan Effective Date.

167. The Compensation Committee may delegate its authority under the Stock Incentive Plan to the Chief Executive Officer ("CEO") of the Holding Company to grant stock options to individuals below the rank of Senior Vice President. The CEO's authority, however, is limited to granting options to purchase shares not exceeding 1.5% of the total number of shares authorized for issuance under the Stock Incentive Plan. Further, no individual may receive during any twelve-month period more than 5% of the total number of shares as to which the CEO is authorized to award options.

168. No amendment to the Stock Incentive Plan may be effective prior to the fifth anniversary of the Plan Effective Date without the consent of the Superintendent.

B. The Directors Stock Plan

169. The Directors Stock Plan permits the Nominating and Corporate Governance Committee ("Nominating Committee") of the board of directors of the Holding Company to pay, in the form of Common Stock, up to one-half of the fees payable to the non-employee directors of the Holding Company for services rendered after the first anniversary of the Plan Effective Date. Any stock paid in lieu of fees may not be sold prior to the second anniversary of the Plan Effective Date. In addition, beginning on the first anniversary of the Plan Effective Date, stock options for the purchase of Common Stock may be granted to directors of the Holding Company, but prior to the fifth anniversary of the Plan Effective Date such options may only be granted in lieu of certain cash fees otherwise

payable. Options to purchase Common Stock are immediately vested, provided, however that they may not be exercised prior to the second anniversary of the Plan Effective Date.

170. Under the Directors Stock Plan, any eligible director may elect to receive all or a portion of the fees that would otherwise be paid in cash with respect to services rendered after the second anniversary of the Plan Effective Date in the form of Common Stock. Also, eligible directors may elect to defer the receipt of any shares issued in lieu of cash fees until after their service with the board of directors terminates. Dividends on the deferred shares will be credited to a stock account.

171. The total number of shares of Common Stock issuable under the Directors Stock Plan in lieu of fees cannot exceed 500,000 shares and, the total number of shares of Common Stock that may be subject to options granted under the Directors Stock Plan will be limited to .05% of the total number of shares of Common Stock immediately outstanding after the Plan Effective Date.

172. No amendment to the Directors Stock Plan may be effective prior to the fifth anniversary of the Plan Effective Date without the consent of the Superintendent.

C. Other Stock-Based Compensation Plans

173. The Plan provides that, subject to certain limits, officers, employees, and insurance agents of MetLife, the Holding Company, and any Company Affiliate may acquire shares of Common Stock under the Other Stock-Based Compensation Plans. The Other Stock-Based Compensation Plans consist of ten existing compensation

plans listed under Schedule 3(c) to the Plan. These include a tax-qualified 401(k) plan, non-qualified auxiliary savings and investment plans, incentive compensation plans, and deferred compensation plans. In general, officers are permitted to receive stock under the Other Stock-Based Compensation Plans starting two years after the Plan Effective Date and non-officer employees are permitted to receive stock under such plans starting on the Plan Effective Date. Officers, employees, and insurance agents may invest their 401(k) accounts in stock and receive company matching contributions in the form of stock, receive their annual and long-term incentives in the form of stock, and allocate their deferred compensation plan accounts to stock and receive company matching contributions in the form of stock.

174. The receipt of stock under the Other Stock-Based Compensation Plans is subject to both individual and aggregate limits until the fifth anniversary of the Plan Effective Date. Officers may not individually receive more than 0.25% of the total number of shares outstanding immediately after the Plan Effective Date, reduced by the number of shares in respect of which options were granted to the officer. Further, the total number of shares available under the Other Stock-Based Compensation Plans that primarily benefit senior officers and highly compensated employees may not, in the aggregate, exceed 5% of the total number of shares outstanding immediately after the Plan Effective Date, reduced by the number of shares in respect of which options are granted under the Stock Incentive Plan.

175. Amendments to the Other Stock-Based Compensation Plans to implement Schedule 3(c) provisions are allowed. However, prior to the fifth anniversary of the

Plan Effective Date, no other amendment, revision, or change in plan administration with respect to the acquisition of stock to any Other Stock-Based Compensation Plan will become effective without the prior approval of the Superintendent.

176. The Superintendent is of the view that the Stock Incentive Plan, the Directors Stock Plan, and the Other Stock-Based Compensation Plans are in compliance with Section 7312(w), contain terms and provisions that are comparable to those of other large public companies, and are generally consistent with the equity compensation plans of other mutual insurers that recently converted to stock form.

X. Future Operations and Solvency

177. Section 7312(e)(1)(H) requires a domestic mutual life insurance company converting to stock form to submit with its plan of reorganization, among other things, a plan of operation for the reorganized insurer, including actuarial projections for a ten-year period and a statement indicating its intentions with regard to issuing any nonparticipating business. MetLife submitted a Plan of Operation and Actuarial Projection (the "Plan of Operation") as Exhibit I to the Plan. The Plan of Operation contemplates the continuation of the current operations of MetLife. Subsequent to the Plan Effective Date, MetLife expects to issue both non-participating and participating policies and contracts, and it has applied to the Department for a permit pursuant to Section 4231 authorizing it to issue participating policies and contracts in New York. The Department expects that this permit will be issued shortly.

178. Section 7312(c)(5) requires that a plan of reorganization must not substantially lessen competition in any line of business. At the public hearing, MetLife submitted an opinion, dated September 28, 1999, from Charles W. de Seve, President, American Economics Group, Inc. (the "AEG Opinion"). The AEG Opinion concludes that the reorganization of MetLife "will not substantially lessen competition in any line of insurance." According to the AEG Opinion, the "reorganization [of MetLife] will serve to increase competition among sellers of insurance in the United States by giving [MetLife] greater access to capital and greater business flexibility" and better enabling MetLife "to compete with other firms in the market for insurance products."

179. In support of these conclusions, the AEG Opinion states that: (1) reorganization will not alter any of MetLife's selling practices, pricing, or lines of business in a significant manner, or cause a reduction in MetLife's lines of business; (2) MetLife's reorganization will not change the number of competitors in the life insurance industry or reduce any competitor's ability to sell life insurance products; and (3) stock insurance companies offer competition products at competitive prices in the same manner as mutual insurance companies and, in addition, other mutual life insurance companies have reorganized into stock form without reducing competition or raising prices.

180. The AEG Opinion states that as a result of its reorganization into stock company form, MetLife will not increase its existing market share in any of its lines of business.

181. Section 7312(j) requires the Superintendent to make certain findings before approving a proposed plan of

reorganization, including a finding that, after giving effect to the reorganization, the reorganized insurer will have an amount of capital and surplus the Superintendent deems to be reasonably necessary for its future solvency. The Annual Statement of MetLife as of December 31, 1999 reported total surplus of $7.630 billion, and an asset valuation reserve of $3.109 billion. The Plan of Operation contains projections of the total capital of MetLife and surplus for the years 1999 through 2009. Based upon these submissions and analysis, the Superintendent is satisfied that MetLife will have an amount of capital and surplus after the reorganization reasonably necessary for its future solvency.

XI. Corporate Governance

182. As required by Section 7312(e)(1)(C), the Company has submitted a proposed charter and by-laws of MetLife as a domestic stock life insurance company set out in accordance with Article 12 of the New York Insurance Law.

183. MetLife also submitted copies of the proposed amended and restated certificate of incorporation and by-laws of the Holding Company (the "Charter and By-Laws"). These documents contain a number of "anti-takeover" provisions including, among other things, a classified board of directors, advance notice requirements for stockholder proposals, supermajority voting for certain business combinations and amendments to the Charter and By-Laws, and prohibitions on stockholder actions by written consent, removing directors without cause, or calling a special meeting of stockholders. MetLife also adopted a shareholder rights plan, or "poison pill," which

would serve to discourage a hostile acquirer from purchasing 10% or more of the outstanding shares of the Common Stock.

184. MetLife and the Company Financial Advisers maintain that: (1) none of these provisions, individually or in the aggregate, prohibit an acquisition of MetLife; (2) such provisions, individually and in the aggregate, are now common in the charters and by-laws of public companies; and (3) the validity of these provisions has been upheld under Delaware law. MetLife maintains that these provisions ensure that any potential acquirer must negotiate an acquisition with the board of the Holding Company and allow the board time to consider all options in the best long-term interests of the stockholders.

185. MetLife and the Company Financial Advisers also have opined that: (1) the Trust does not have any material anti-takeover effect; (2) the terms of the Trust Agreement require the Trustee to solicit the Trust Beneficiaries in any contested election; (3) a Trust Beneficiary can participate in a tender or exchange offer or counteroffer or sell its shares in the marketplace at any time; and (4) the anti-takeover provisions, either alone or in conjunction with the Trust, will not adversely affect the market for the IPO, the IPO Price or the trading price of the Common Stock subsequent to the IPO. The Company Financial Advisers have represented that the Private Placements, including the attendant standstill provisions and transfer restrictions, will not have an adverse impact on the market for the IPO, the IPO Price or the trading price of the Common Stock subsequent to the IPO. The Company Financial Advisers have represented that the Private Placements, including the attendant standstill provisions and transfer restrictions, will not have an

adverse impact on the market for the IPO, the IPO Price or the MetLife share price subsequent to the IPO.

186. In addition, Debevoise, and Richards, Layton & Finger, special Delaware counsel to MetLife, have submitted separate opinions, each dated May 4, 1999, that the provisions of the Charter and By-Laws, as then currently proposed, do not contravene the laws of the State of Delaware.

187. The Superintendent and the Consultants have determined that the provisions of the Charter and By-Laws are comparable to those of other recently-demutualized insurers and other large publicly-traded financial services companies.

188. Certain policyholders objected that the Charter and By-Laws and the Trust could entrench management of the Holding Company and prevent the stockholders of the Company from obtaining maximum value for their consideration. Section 7312 does not prohibit takeover defenses in the charter and by-laws of reorganizing insurers or their holding companies. MetLife and the Company Financial Advisers have represented to the Department that the inclusion of anti-takeover provisions in the Charter and By-Laws will not have an adverse impact on the market for the IPO or the future trading price of the Common Stock.

XII. Tax Matters

189. The Plan requires MetLife to secure either rulings from the IRS or favorable opinions of Debevoise or other nationally-recognized independent tax counsel, dated as of the Plan Effective Date, that, for Federal

income tax purposes, as a result of consummation of the Plan:

(1) Policies issued by MetLife prior to the Plan Effective Date will not be deemed newly issued, issued in exchange for existing policies or newly purchased for any material federal income tax purpose;

(2) the crediting of consideration in the form of Policy Credits, will not result in a distribution to an employee or beneficiary that is subject to withholding, adversely affect the favorable tax status of certain Policies, nor result in the imposition of certain penalties for the holders of such Policies;

(3) Eligible Policyholders receiving solely Trust Interests will not recognize gain or loss for federal income tax purposes;

(4) Trust Beneficiaries will not recognize gain or loss for federal income tax purposes as a result of either the deposit of shares of Common Stock or Company Common Stock into the Trust or the withdrawal of Trust Shares from the Trust;

(5) the conversion of MetLife from a mutual life insurance company into a stock life insurance company under Section 7312 will qualify as a reorganization under the Code and MetLife will be a party to the reorganization within the meaning of the Code; and

(6) the Holding Company will not recognize any gain or loss for federal income tax purposes as a result of its issuance of Common Stock to the Trust, its receipt of shares of Company Common Stock, its cancellation, for no consideration, of its Common Stock previously issued to MetLife and

held by MetLife immediately prior to the Plan Effective Date, or its sale of shares of Common Stock in the IPO for cash.

190. MetLife received the opinion of Debevoise, dated September 28, 1999 (the "Tax Opinion") to the effect set forth above.

191. The Plan also requires that MetLife secure a favorable ruling from the IRS to the effect that the Trust will be classified as a "grantor trust" within the meaning of the applicable provisions of the Code. MetLife received a ruling of the IRS, dated September 22, 1999 (the "IRS Ruling"), to the effect set forth above.

XIII. Department of Labor Exemption

192. The Plan requires MetLife to apply to the United States Department of Labor for an exemption (the "DOL Exemption") from any sanctions that might otherwise result, pursuant to Section 406 of the Employee Retirement Income Security Act, 29 U.S.C. § 1106(a), and Section 4975 of the Tax Code, with respect to receipt of consideration by qualified employee benefit plans. Notice of the proposed DOL Exemption was published, as required, in the Federal Register on November 24, 1999, and thereafter was mailed to interested persons for comment. The final DOL Exemption was published in the Federal Register on March 13, 2000.

XIV. Securities Laws Matters

193. Article V of the Plan requires that MetLife receive a favorable no-action letter or exemptive relief from the SEC to the effect that, among other things,:

(1) the Trust Interests may be distributed to Trust Eligible Policyholders under the Plan without registration under the Securities Act, in reliance on the exemption provided under Section 3(a)(10) of that Act;

(2) Trust Beneficiaries who are "affiliates" (as defined in the Securities Act) may withdraw shares from the Trust and resell shares withdrawn from the Trust without registration under the Securities Act;

(3) the Purchase and Sale Program may be operated in accordance with this Plan, the Trust Agreement and the Purchase and Sale Program Procedures in compliance with the Securities Act and the Securities Exchange Act of 1934, as amended; and

(4) the Trust is not required to be registered under the Investment Company Act of 1940, as amended.

MetLife received favorable no-action and exemption relief from the SEC on November 17, 1999.

194. Article V of the Plan also requires that Debevoise or other nationally-recognized independent counsel, provide a blue sky memorandum to the effect that the Trust Interests may be distributed to Trust Eligible Policyholders under the Plan without registration and without registration of the Holding Company, MetLife, or the Trust as a broker-dealer or issuer-agents, under state securities laws and insurance securities laws. Debevoise provided a blue sky memorandum to that effect on November 18, 1999.

XV. Expenses

195. Consistent with the authority conferred by Section 7312(d)(4)(C), the Superintendent determined that it is in the interest of the policyholders for MetLife to pay for the costs and expenses of the proposed reorganization. Accordingly, pursuant to Section 7312(p), MetLife and the Holding Company furnished the Superintendent with separate undertakings, satisfactory to the Superintendent, committing to pay for all of the costs and expenses incurred in the reorganization, including those incurred by the Department.

XVI. Notice of Pendency

196. Section 7312(q) requires a domestic mutual life insurance company converting to stock form to send notice of the pendency of its plan of reorganization and the effect thereof, in a form approved by the Department, to all persons to whom the insurer delivers one or more policies, contracts, or certificates issued after the date on which the plan of reorganization is adopted and before the effective date of the plan. The notice must inform such persons that they may rescind the policy, contract, or certificate and obtain a refund of any amounts paid with respect thereto by providing written notice to the insurer or its agent within 10 days of receipt of the notice of pendency.

197. MetLife prepared several versions of a notice of pendency for use in connection with different policies and contracts issued after the Adoption Date and before the Plan Effective Date. The Department approved these notices for use and has required MetLife to submit a certification to the Department, as of the Plan Effective Date, that the Company complied in all respects with the

requirements of Section 7312(q) (the "Notice of Pendency Certification").

Conclusions and Decision

198. Based upon the foregoing, review of the Plan and the Exhibits and Schedules thereto, the opinions and certifications of the Consultants of the Department, such other documents and information as deemed appropriate, and in reliance upon the agreements, representations, and commitments of MetLife and the Holding Company, it is hereby concluded, decided, or directed as follows:

199. The Plan demonstrates a purpose and specifies reasons for the proposed reorganization sufficient to comply with Section 7312(c)(1).

200. The reorganization of MetLife from a mutual insurer to stock company form, as set forth in the Plan, is in the best interest of MetLife and its policyholders, in compliance with Section 7312(c)(2).

201. The provisions of the Plan are fair and equitable to the policyholders of MetLife, in compliance with Section 7312(c)(3).

202. The reorganization of MetLife from a mutual insurer to stock company form, as set forth in the Plan, will provide for the enhancement of the operations of MetLife, in compliance with Section 7312(c)(4).

203. The reorganization of MetLife from a mutual insurer to stock company form, as set forth in the Plan, will not substantially lessen competition in any line of insurance business, in compliance with Section 7312(c)(5).

204. The Policyholders' Membership Interests will be exchanged for an aggregate amount of consideration that

is fair and equitable to the policyholders of MetLife and meets the requirements of Section 7312, in compliance with Section 7312(d)(4)(A).

205. The consideration to be given to the policyholders of MetLife will be allocated among such policyholders in a manner which is fair and equitable, in compliance with Section 7312(d)(4)(B).

206. It is in the interest of the policyholders of MetLife that the costs of the Reorganization are to be borne by the MetLife, and the undertakings with respect to such costs provided by MetLife and the Holding Company are in compliance with Section 7312 (d) (4) (C).

207. The provisions of the Plan are fair and equitable to the policyholders of MetLife, taking into account the legitimate economic interests of participating policyholders as delineated in Section 7312, in compliance with Section 7312 (d) (4) (D).

208. Certain of the assets of MetLife have been allocated to the Closed Block as of December 31, 1998 (including provision for subsequent adjustments) in an amount that produces cash flows which, together with anticipated revenue from the Closed Block Business, can reasonably be expected to be sufficient to support the Closed Block Business, including, but not limited to, provisions for payments of claims and surrender benefits, certain expenses, and taxes, and to provide for continuation of current payable dividend scales, if the experience underlying such dividend scales continues and for appropriate adjustments in such scales if the experience changes, in compliance with Section 7312(d)(5).

209. Reasonable provisions have been established under the Plan for the appropriate financial treatment of

individual Participating Policies excluded from the Closed Block.

210. The Plan was adopted by the Board of MetLife in compliance with Section 7312(e)(1).

211. The Plan sets forth a demonstration of the purpose of the proposed Reorganization, the form of the Reorganization, the manner and basis by which the Reorganization will take place, the consideration to be given to policyholders in exchange for their Policyholders' Membership Interests, the method of allocation of consideration among policyholders, the method of operation of the participating business In Force on the Plan Effective Date, and a Plan of Operations, including actuarial projections for a ten-year period and a statement indicating the intentions of MetLife with regard to issuing non-participating business, in compliance with 7312(e)(1)(A) through (H).

212. MetLife has applied for a revocable permit authorizing the Company to issue participating policies and contracts in New York State, in compliance with Section 7312(e)(1).

213. The Plan contains other conditions and provisions which the Board of MetLife deems necessary or advisable in connection with the Reorganization, in compliance with Section 7312(e)(1).

214. The consideration to be given in exchange for the Policyholders' Membership Interests is in compliance with Section 7312 (e) (2).

215. Notice of the public hearing and the policyholder vote on the Plan was given to the Eligible

Policyholders of MetLife and newspaper publication was made, in compliance with Section 7312(e)(3), (i), and (k)(1).

216. The policyholder notices and accompanying documents, including the Policyholder Information Booklets, Parts One and Two, contained sufficient information about the proposed reorganization to enable Eligible Policyholders to make an informed decision regarding the Plan and, for that reason, were approved by the Superintendent pursuant to Section 7312 (i), (k)(1).

217. MetLife complied substantially and in good faith with the requirement of providing notice of the public hearing and policyholder vote, and, consistent with Section 7312(s), its failure to provide timely notice to approximately 3,000 policyholders previously thought to be "lost" does not impair the validly of the Company's actions pursuant to Section 7312 or entitle such persons to any injunctive or other equitable relief with respect thereto.

218. Copies of the Plan, as adopted, were submitted to the Superintendent in compliance with Section 7312(e)(4).

219. The public hearing was conducted in compliance with Section 7312(i).

220. The public hearing record was kept open for additional submissions by policyholders and members of the public until February 14, 2000, and, for purposes of the 60-day period in which the Superintendent must approve or disapprove the Plan pursuant to Section 7312(j), this Opinion and Decision has been timely issued.

221. A proposal to approve the Plan was submitted to policyholders and notice of the vote was provided to policyholders in compliance with Section 7312(k)(1).

222. Policyholders were entitled to vote on the Plan, in compliance with Section 7312(k)(2), and the Plan was approved by the affirmative vote of more than two-thirds of all votes cast by policyholders entitled to vote, in compliance with Section 7312(k)(2).

223. The Superintendent supervised and directed the vote as necessary to ensure a fair and accurate vote, in compliance with Section 7312(k)(3).

224. The Superintendent appointed certain Department personnel as inspectors of the vote and appointed E&Y to assist these inspectors, in compliance with Section 7312 (k) (4).

225. Representatives of the policyholders either were or could have been present for the vote, in compliance with Section 7312(k)(5).

226. The policyholder mailing lists did not knowingly omit any policyholders eligible to receive notice of the reorganization, public hearing, and policyholder vote, and any inadvertent omissions were remedied to the satisfaction of the Department, in compliance with Section 7312(k)(6).

227. The documents and certifications required by Section 7312(k)(11) were provided to the Department.

228. The corporate existence of MetLife will continue in the manner provided for in Section 7312(m).

229. The directors and officers of MetLife will serve as directors and officers of MetLife after the Reorganization in the manner provided for in Section 7312(o).

230. The undertakings required by Section 7312(p) were provided to the Department.

231. The notice of pendency required by Section 7312(q) was provided to all persons to whom MetLife delivered policies or contracts issued after the Adoption Date and before the Plan Effective Date.

232. The acquisition of Common Stock prior to and for five years following the Plan Effective Date by officers, directors, and employees of MetLife, the Holding Company, and any Company Affiliate, including the family members of such persons and their spouses, meets the requirements of Section 7312(w).

233. As set forth in the Plan, proposed Reorganization of MetLife, in whole and in part does not violate the New York Insurance Law, is fair and equitable to the policyholders of MetLife, and is not detrimental to the public, and after giving effect to the reorganization, MetLife will have an amount of capital and surplus reasonably necessary for its future solvency, in compliance with Section 7312(j).

234. The issuance of the Capital Note complies with the requirements of Section 1323(a) and is not adverse to the interests of MetLife's policyholders pursuant to Section 1323(b). Therefore, issuance of the Capital Note is hereby approved.

235. The foregoing Conclusions shall be subject to the following conditions, which, if they are not met prior to or on the Plan Effective Date, shall render this Opinion and Decision and the approval of the Plan set forth herein null and void and of no further force and effect, unless an amended Opinion and Decision is issued:

a. The Underwriting Agreements and any amendments thereto executed in connection with the IPO and any Other Capital Raising Transactions shall contain terms and provisions acceptable to the Superintendent.

b. A copy of each of the Company Financial Advisers Opinions, the IPO Letter, the Tax Opinion, the Merrill Lynch Opinion, the Blackstone Fairness Opinion, the Blackstone IPO Procedures Opinion, and the Notice of Pendency Certification dated as of the Plan Effective Date, shall be delivered to the Superintendent on the Plan Effective Date.

c. Final versions of documents and agreements submitted to the Department in draft form, including, without limitation, the Stock Purchase Agreements, the Standstill Agreements, and the Capital Note, are executed in the form submitted to the Department and are not amended or otherwise altered, and the final terms of the Private Placements are approved by the Superintendent.

d. If, prior to one year from the date of this Opinion and Decision, the sale of the Common Stock pursuant to the IPO has not occurred, this Opinion and Decision and the approval of the Plan set forth herein shall be null and void and of no further force and effect, unless an amended Opinion and Decision is issued.

236. The Superintendent will retain jurisdiction of all matters relating to the Reorganization of MetLife until the preceding conditions have been met.

237. All of the objections to the proposed reorganization raised at the public hearing, included in the written submissions made part of the record or otherwise submitted to the Department, have been considered. Upon consideration of the record in its entirety, and for the reasons specified in this Order and Decision, none of these objections, individually or in the aggregate, merits a decision that the Plan is not fair and equitable as required by Section 7312 or that the Plan should not be approved as provided, and subject to the conditions set forth, herein.

238. For the reasons set forth herein, the proposed reorganization, in whole and in part, does not violate applicable law, is fair and equitable to the policyholders, and is not detrimental to the public, and, after giving effect to the reorganization, the reorganized insurer will have an amount of capital and surplus reasonably necessary for its future solvency.

THEREFORE, under Section 7312(j) the Plan shall be approved, as herein provided.

Based upon the foregoing, and subject to the satisfaction of each and every condition set forth herein, the Plan is APPROVED.

Dated: April 4, 2000
New York, New York

Neil D. Levin
Superintendent of Insurance

APPENDIX G

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

STEPHEN TANCREDI and RONALD SPEIDEL, on behalf of themselves and all others similarly situated,	
Plaintiffs,	Civil Action No. *00 Civ. 5780*
v.	Judge Kaplan
METROPOLITAN LIFE INSURANCE COMPANY, a New York stock company, and METLIFE, INC., a Delaware Holding Company,	A JURY TRIAL IS REQUESTED
Defendant.	

AMENDED CLASS ACTION COMPLAINT

1. This class action is brought on behalf of the former policyholders of Metropolitan Life Insurance Company ("Company"), against MetLife, Inc. a Delaware corporation ("Holding Company") and its wholly owned subsidiary, Metropolitan Life Insurance Company ("Corporation"), previously a mutual life company, but now doing business as a stock life company. (Unless the context directs otherwise, "MetLife" will refer to MetLife, Inc., together with the Corporation.) This action alleges that the implementation of the Plan of Reorganization of the Company from a mutual to a stock corporation (the "Plan") constituted an unconstitutional "taking" and "impairment" of former Policyholders' ("Policyholders") ownership interests in insurance contracts with the Company in

violation of the "Takings Clause" of the Fifth and Fourteenth Amendments, the Commerce Clause, Article I, Section 8, clause 3, and the "Impairment Clause" of Article I, Section 10 of the Constitution. Under the Plan, Policyholders' ownership interests were taken by the joint participation of the State of New York and MetLife, (both state actors in this transaction), but were not provided "just compensation." As a result of the conversion from a mutual to stock corporation, Policyholders seek damages from MetLife to remedy the "unjust compensation" caused by the Plan.

JURISDICTION AND VENUE

2. Jurisdiction and venue in this Court are proper under 28 U.S.C. § 1343. Each of Plaintiffs' eight (8) causes of action are based on 42 U.S.C. § 1983.

PARTIES AND OTHERS

3. Representative Plaintiff Stephen W. Tancredi was a participating policyholder of Metropolitan Life Insurance Company, a New York mutual insurer (the "Company"). *See* Exhibit A. Mr. Tancredi resides at 161 Hillcrest Avenue, Providence, Rhode Island. Currently, he is entitled to become a shareholder in MetLife, Inc., a Delaware corporation.

4. Representative Plaintiff Ronald Speidel was a policyholder of two Company participating policies. *See* Exhibit B. Mr. Speidel resides at 50316 Cindy Drive, Pennwood Estates, St. Clairsville, Ohio 43920. Currently, he is entitled to become a shareholder in MetLife, Inc.

5. Similarly situated Policyholders timely provided written objections to the Company's demutualization Plan, when it was submitted to the Superintendent for public review, and testified at a hearing intended to consider such objections. The Plan was approved by the Superintendent on April 4, 2000, over objections of the Policyholders.

6. The Company was a mutual insurance company incorporated and chartered under the laws of New York in 1915, and existed until April 4, 2000. Its principal place of business was at One Madison Avenue, New York, New York. The Company is no longer in existence but its obligations have been assumed by MetLife, Inc., the Corporation, or both, i.e., MetLife.

7. Defendant MetLife, Inc., is a Delaware corporation with a listed address as c/o The Corporation Trust Company, Corporation Trust Center, 1209 Orange Street, Wilmington, DE 19801. Prior to the April 4, 2000 conversion, it was a wholly owned subsidiary of the Company. After the conversation, it became a publicly-traded holding company that owned all of the shares of the Corporation. For purposes of this lawsuit, MetLife, Inc. was the vehicle used by the State of New York and the Company to distribute the assets of the Company to persons who were not formerly policyholders of the Company. Together, "MetLife, Inc." and the Corporation" will be referred to as "MetLife."

8. Defendant corporation, also named Metropolitan Life Insurance Company ("Metropolitan Life"), is a New York stock life insurance corporation whose shares are wholly owned by MetLife, Inc. It came into existence, on April 4, 2000, as a result of the implementation of the

Plan. Its principal place of business is One Madison Avenue, New York, NY 10010.

9. Neil D. Levin is the New York Superintendent of Insurance ("Superintendent"), with principal offices at the New York State Insurance Department, Empire State Plaza Agency, Agency Building No. 1, Albany, NY 12257 and 25 Beaver Street, New York, NY 10004.

I. THE POLICYHOLDERS OWNED AND CONTROLLED THE COMPANY UNDER THE 1915 CHARTER

10. On January 6, 1915, the State of New York entered into a charter with the Company. A copy of the 1915 Charter is attached hereto as Exhibit C. The Charter was a contract between the State of New York and the Company that provided state authorization to the Company to operate as a mutual life insurer.

11. The 1915 Charter provided contractual ownership rights to policyholders of the Company. In a mutual life insurance company, the policyholders own and control the company solely for the purpose of obtaining insurance at cost. The right of ownership by a policyholder vests upon the purchase of a participating policy of life insurance from the mutual company. Under the 1915 Charter, Policyholders obtained ownership rights, including the right to: 1) ownership to the exclusion of others, except other policyholders, and the right to direct corporate operations through voting, including the right to elect management and determine fundamental corporate changes; 2) obtain life insurance at cost; 3) a return of unused premiums in excess of amounts needed to cover

losses and expenses; and 4) common equitable ownership of the assets of the mutual enterprise.

12. In addition to corporate ownership rights, Policyholders also obtained contractual rights to "participating contracts" with the Company. A "participating life insurance contract" provides a contractual right to the policyholder to participate in surplus, based upon the experience of other policyholders of the same class. Mutual insurance companies such as the Company provide life insurance coverage by insuring that the insurer's assets are adequate to pay insurance claims when they are filed. To meet its legal and economic obligations, a mutual insurer charges premiums such that the expected value of premium payments is in excess of the corresponding value of anticipated benefits and expenses. When assets are more than sufficient, as determined by the mutual's board, portions of policyholders' premiums are returned to the policyholders in the form of dividends. This mutual form of company ownership allows policyholders to obtain insurance protection at cost.

13. Participating policies differ substantially from "non-participating policies" in that an insurer selling "non-participating policies," determines the price or premium of its policy based upon the insurer's best estimate with regard to mortality, interest, expense and other factors. A contingency factor and profit loading are then added to the preliminary price to determine a final price which remains constant. If the insurer's estimates are too low, it will lose money, and, if they are high enough, it will make money. In the latter case, it may be unable to sell policies if competitors can offer a similar product for a better price. The relationship between the insurer and the policyholder

with a non-participating policy is more like that of a debtor-creditor.

14. By contrast, the premiums for "participating policies," such as those offered by the Company, are determined using formulae that are structurally similar to those used with "non-participating" policies, except that there is no added "profit loading," and the primary assumption factors will have a conservative rather than a "best-estimate" expression. This results in up-front policy premiums which are usually higher than those of similar "non-participating" policies. As experience unfolds, however, participating policyholders will have the respective portions of their up-front premiums, that turn out, in retrospect, to have been excessive, returned to them as dividends, a process that, over the long run, results in adjusted contract prices that are equal to the respective costs that the insurer actually incurs in providing the insurance coverage. The insurer's relationship to its policyholders, because of its duty to provide policyholders with an "at cost" price, is similar to that of a trustee to a beneficiary. A "participating policyholder," therefore, shares in the risks, costs and other experience [sic] related to other policies of the same class. Participating policies thus provide owners with vested rights to the organizational structure of the company.

15. Pursuant to the 1915 Charter, the Company was operated as a mutual life insurance company for 85 years. Prior to April 2000, the Company was owned and controlled by approximately 11 million policyholders. The Company, during this extended time period, had accumulated a $7.630 billion dollar surplus. The actual fair market value of the Company at this time was unknown but believed to be tens of billions of dollars.

II. THE COMPANY COULD NOT RESCIND ITS CHARTER OR MODIFY POLICYHOLDERS' CONTRACTUAL OWNERSHIP RIGHTS EXCEPT PURSUANT TO THE EXERCISE OF STATE POWER UPON THE PAYMENT OF JUST COMPENSATION

16. Policyholders' ownership and contractual rights acquired under the 1915 Charter could not be taken or modified except upon express written consent. The Company did not have the power to unilaterally rescind or change Policyholder ownership and contractual rights. The State of New York only had the governmental power to take property without consent, but only on the payment of just compensation.

17. In 1988, the New York legislature enacted a new statute that created a procedure to convert mutual life insurance companies to stock life insurance corporations. N.Y. INS. LAW § 7312 (McKinney's 1999) (the "Conversion Law"). The purpose of the Conversion Law was to enable New York insurers to remain "financially sound and competitive." N.Y. INS. LAW § 7312 (McKinney's Supp. 1999-2000) (Historical and Statutory Notes).

18. The Conversion Law provides that the State of New York and a state chartered mutual company can agree to rescind the mutual charter granted by the state if certain prerequisites are satisfied, including, *inter alia*:

a. The mutual board must adopt a reorganization plan that complies with the Conversion Law and is "fair and equitable to policyholders;"

b. The proposed plan must set forth the purpose for the conversion; the form of reorganization;

the proposed charter and by-laws of the new organization; the process through which the reorganization will occur; the consideration to be given to the policyholders in exchange for their control and property interests; the method of allocating consideration among the policyholders; the current method for operating the mutual insurer's business; and a plan for operating the insurer's business after reorganization;

c. The Superintendent must hold a public hearing on the reorganization plan;

d. The Superintendent shall approve the reorganization plan if it does not violate the Conversion Law, is fair and equitable to the policyholders and is not detrimental to the public; and

e. The reorganization plan shall be approved by the mutual insurer's policyholders, through the votes of two-thirds of the policyholders voting, after the policyholders have been provided notice, a copy of the Mutual Plan, and other information as may be approved by the Superintendent.

III. THE COMPANY AND THE STATE OF NEW YORK AGREED TO USE THE STATE'S POWER TO TAKE POLICYHOLDERS' OWNERSHIP RIGHTS AND TO MODIFY POLICYHOLDERS' INSURANCE CONTRACTS

19. On September 28, 1999, the Company's Board of Directors (the "Company Mutual Board") adopted its "Plan of Demutualization" (the "Plan"). A copy of the Plan is attached as Exhibit D. The Plan required the conversion of

the Company to a New York stock corporation whose shares would be wholly owned by MetLife, Inc. a Delaware corporation, i.e., the Holding Company. The Holding Company would be a publicly-traded Delaware stock company. Its Initial Public Offering ("IPO") occurred on April 5, 2000, which date became the effective date of the Plan. Under the Plan, MetLife, Inc. would own all of the shares in and exercise complete control over the Corporation. Thus, while both MetLife, Inc. and the Corporation were corporations, only MetLife, Inc. stock would be traded publicly.

20. Once finalized, the Plan would dissolve the ownership of *Policyholders* in the Company, who could then eventually become *stockholders* in MetLife, Inc. Policyholders of the Company would be compensated through payment in cash, insurance policy credits, or the transfer of their equitable stock rights to a Trust created by the Plan.

21. On September 28, 1999, the Company adopted the Plan, and, in November of 1999, it adopted certain amendments. A Notice of Public Hearing was mailed on November 24, 1999, and a hearing on the Plan was scheduled for January 2000.

22. The Superintendent thereafter approved the Plan on April 4, 2000. A copy of the Superintendent's Decision approving the Plan is attached as Exhibit E. (References hereinafter "Ex. E, Sup. Op. ¶ ___"). In his 102 page "Opinion and Decision," the Superintendent, Neil Levin, concluded that the Plan was "in the best interest of MetLife [the Company] and its policyholders" and "fair and equitable to the policyholders of MetLife [the Company]." Ex. E, Sup. Op. ¶¶ 200-201.

23. Immediately before demutualization, Policyholders owned *100%* of the controlling interest of the Company. Policyholders also had a *100%* interest in the Company's $7.630 billion in surplus and $3.109 billion in other assets. Ex. E, Sup. Op. ¶ 181. After demutualization, Policyholders no longer controlled or owned these assets. Moreover, Policyholders, through their company, were charged tens of millions of dollars in costs and expenses to enable MetLife to convert Policyholders' property interests in the Company without their affirmative consent.

IV. METLIFE, INC. AND THE COMPANY, AND THE CORPORATION ALL ACTED UNDER THE COLOR OF STATE LAW IN DEPRIVING POLICYHOLDERS OF PROPERTY RIGHTS SECURED BY THE FEDERAL CONSTITUTION, AND METLIFE IS, THEREFORE, SUBJECT TO LIABILITY FOR THIS DEPRIVATION

24. The Company and the Corporation, in implementing the Plan, violated the Fifth and Fourteenth Amendments to the United States Constitution (unconstitutional taking of property); the Commerce Clause (U.S. CONST. art. I, § 8, cl. 3); and the Impairment of Contract Clause (U.S. CONST. art. I, § 10, cl. 1). Each of these constitutional violations provides the basis for a claim under 42 U.S.C. § 1983.[1]

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[1] The Fourteenth Amendment provides that the government shall not take private property for public use without just compensation. The Impairment of Contract Clause insures that states will not pass any law impairing the obligations of contracts. U.S. CONST. art. I, § 10, cl. 1.

(Continued on following page)

25. The Company and the State of New York agreed to a 1915 Charter, under which they agreed that the Company would operate only as a mutual life insurance company. Policyholders acquired substantial property rights under this Charter. The Company and the State of New York knew that if they rescinded or altered the Charter, Policyholders' property rights would be impaired or destroyed.

26. The New York Legislature nevertheless concluded that a public use – bolstering the financial viability of life insurance companies – existed to rescind the Charter and convert privately owned mutual membership interests to publicly held stock ownership interests. It therefore enacted the Conversion Law in 1988, through which it exercised its power to take the mutual memberships. Under the Conversion Law, the New York Legislature delegated New York's Fourteenth Amendment duty to provide just compensation to MetLife to satisfy that burden. See N.Y. INS. LAW § 7312(d).

27. Through its Plan, the Company proposed a method by which New York and MetLife would rescind the 1915 Company Charter. New York approved the Plan and agreed to rescind the Charter. In implementing this agreement to rescind the Charter and share New York's government power to take property for just compensation, the Company, the Corporation and MetLife, Inc., for purposes of this one transaction, became state actors.

A private actor, jointly participating with state actors may also be deemed to be state actors under the U.S. Constitution.

28. New York did have the power to take Policyholders' property without consent, but only upon the payment of just compensation. In addition, MetLife, both private entities did *not* have the power to take Policyholders' property, the mutual memberships, without consent. Under the Conversion Law and the Plan, New York therefore authorized MetLife, to use the state's power to take Policyholders' ownership interests and contractual rights. MetLife thus undertook a traditional government function, the taking of property, to allegedly foster a purported governmental interest – maintenance of a mutual insurer's financial viability.

29. The Company elected to convert from a mutual to stock life insurance corporation and, thereby repudiated the ownership rights and the right to participating life insurance contracts of its Members, including those of the Representative Plaintiffs. By divesting Policyholders of ownership and depriving them of their contractual rights, the Company was obligated to pay them complete restitution as required pursuant to applicable state law where the insurance contracts were delivered. MetLife has not provided complete restitution and the decision of the Superintendent has purportedly relieved the Company of this obligation.

30. The Company acted under the color of state law in proposing and implementing the Plan and repudiating Policyholders' contracts. The Company, along with the Corporation and MetLife, Inc. acting under the color of state law, deprived Policyholders of rights secured by Amendment XIV and Article I, Section 10 of the United States Constitution by utilizing the sovereign power of the State of New York to take property, but *not* providing just compensation.

V. METLIFE, BOTH PRIVATE ENTITIES, BECAME STATE ACTORS UNDER NEW YORK'S CONVERSION LAW IN THE DEMUTUALIZATION OF THE COMPANY

31. Under the New York Conversion Law, the state Insurance Superintendent (a) is required to be actively involved and to make a number of discretionary factual findings to ultimately determine whether the standards of the New York Conversion Law are satisfied by the private mutual insurer seeking to demutualize *and* (b) had the right to make the controlling decision to approve any proposed final demutualization plan. Therefore, the New York Insurance Superintendent was a joint participant in the Company's private decision to demutualize.

32. New York was not only a joint participant in the Company's private decision to demutualize but was also a joint participant in determining the value of the Policyholders' contractual and voting interests. In this connection, instead of valuing Policyholders' interests by the laws of the states under which the policy contracts were formed, MetLife and the State of New York used only New York law to value Policyholders' ownership and contractual rights. This valuation method also required the New York Insurance Department to make highly discretionary factual findings under New York law to determine a final amount to be paid Policyholders in consideration for the termination and/or repudiation of their mutual policies or membership interests.

33. The decision whether the Company could demutualize, as required under state law, was a joint/state private actor decision. Neither the Company, the Corporation, MetLife, Inc. or the State of New York could unilaterally compel demutualization. The Company had to

voluntarily join and act in concert with the state actors (the Insurance Superintendent) since their agreement to demutualize was required under New York Conversion Law.

34. Under the New York Conversion Law, the private and state actors were bound at the hip if a demutualization was to be finalized. However, at all times, the Company had the complete freedom under state law to remain a mutual, private actor not subject to 42 U.S.C. § 1983 liability.

VI. THE STATE, THE COMPANY, THE CORPORATION AND METLIFE, INC. ALL PARTICIPATED IN THE DECISION TO RESCIND THE 1915 COMPANY CHARTER WITHOUT PROVIDING JUST COMPENSATION OR PROTECTING POLICYHOLDERS FROM IMPAIRMENT OF THEIR CONTRACTUAL INTERESTS

35. In implementing the Plan, the State of New York, the Company, the Corporation and MetLife, Inc. are, as "state actors," engaged in "taking" Policyholders' property and, therefore, had a duty to provide Policyholders "just compensation," which means the "fair market value" of the property at the time of the taking. The Company was obligated to provide complete restitution, under the laws of the state of contract delivery, to Policyholders for its repudiation of Policyholders' property and contract rights. The Plan did not provide for the payment of "fair market value" at the time of taking, but only discounted, contingent compensation that was based upon MetLife Inc.'s initial public offering ("IPO") price and as otherwise restricted by a so-called trust agreement. Neither the

Company, the Corporation or MetLife, Inc. has provided complete restitution to date.

1. The Value Provided Was Not Fair Market Value At The Time Of The Taking

36. The Plan provided that, in exchange for the sale of their Memberships, Policyholders would receive a proportionate share of the Company's aggregate value, as determined by the price of stock in MetLife, Inc. on the date of its IPO, through cash, policy credits, or beneficial rights in a trust.

37. Pursuant to the Plan, Policyholders could elect to receive policy credits, cash or common stock in return for the extinguishment of their Company Policyholders' rights. Policyholders who elected Common Stock and those who failed to make any election received an interest in a Trust operated pursuant to a Trust agreement between MetLife, Inc., Wilmington Trust Company and Chase-Mellon Shareholder Services. A copy of the Trust agreement is attached as Exhibit F. Policyholders who elected to be paid in cash or policy credits received or will receive cash or policy credits in proportionate amounts. Many, if not most, Policyholders made no elections. Some Policyholders were denied any opportunity to make any election. Of those who were denied the opportunity, some were required to accept cash; others were required to accept policy credits.

38. In addition to the 202,000,000 shares of MetLife, Inc. common stock that were offered to the public, 493,903,472 shares of common stock were issued to a Trust to be held for the benefit of certain Policyholders, along with a list of the total shares of MetLife, Inc. allocated to

each former Policyholder. See Exhibit D, Plan Section 3.3. The Custodian of the Trust then provided each Policyholder a number of interests in the Trust ("Trust Interests") equal to the number of shares allocated. Thus, Policyholders did not become stockholders in MetLife, Inc. but instead, only received a beneficial interest in the Trust.

39. The Trust Agreement created substantial restrictions on Trust Beneficiaries' right to obtain value for their Trust Interests. For example, Trust Beneficiaries:

a. Could not buy or sell MetLife, Inc. common stock for the first 90 days after the effective date;

b. Could sell their Trust Interests only after satisfying certain conditions and only through the Trust Agreement's Broker-Dealer affiliate;

c. Could not exercise the right to convert Trust Interests to shares of common stock in MetLife, Inc. until one year after the effective date;

d. Holders of more than 25,000 Trust Interests were subjected to volume limitations for the first 300 days;

e. Holders of less than 1,000 Trust Interests could purchase additional Common Stock, but it could not exceed the value of 1,000 Trust Interests that would be retained pursuant to the terms of the Trust;

f. Holders of more than 100 Trust Interests and who elected to sell were required to sell in 100 Trust Interest increments and could not

hold less than 100 Trust Interests after a partial withdrawal; and

g. Holders of 99 or fewer Trust Interests and who elected to sell were required to sell *all* their Interests.

40. The Trust Agreement required the Trustee to vote on behalf of MetLife, Inc., except in limited cases when the Trustee could vote as directed by the Trust Beneficiaries. Thus, the Trustee could be forced to vote the MetLife, Inc. shares *against* the Trust Beneficiaries' interests.

41. Finally, in connection with dissolving the Trust, MetLife, Inc. could purchase some or all of the Trust Interests from the Trust "at a price equal to the average of the closing price of the Common Stock on the 20 consecutive trading days *preceding* such offer." (Emphasis added). Ex. E, Sup. Op. 70. This is similar to buying stock on a Friday at the preceding Monday's sale price.

2. The Method For Allocating Consideration Impaired Contractual Rights And Deprived Policyholders Of Fair Market Value

42. The Plan provided that each Policyholder would be allocated compensation for his or her membership interests, based upon the number of MetLife, Inc. shares he or she was allocated using an actuarial formula. The formula allocated shares based on both a fixed component and a variable component. The fixed component allocated 10 shares for each policy owned by a Policyholder on the Plan's effective date.

43. The variable component allocated shares based upon a formula purportedly intended to reflect each policy's past and future contributions to the Company's surplus. The centerpiece of the variable component, the "Historic Plus" formula, is based upon an actuarial theory that allocates more shares for recently acquired policies. The formula allocates consideration based, in part, on *projected* future surplus contributions, rather than allocating exclusively based on past surplus contributions, as had been the Company's longstanding practice.

44. The "Historic Plus" formula is contrary to Policyholders' rights under their 1915 Company Charter, because it *was* not based exclusively upon each Policyholder's *past* contribution to surplus, and was not based upon traditional mutual company operations which would require that the total surplus belongs to the then existing Policyholders based on the amounts they paid to date. The "Historic Plus" formula deprives Policyholders of the right to restitution based upon the amount of their respective contributions to surplus.

3. The Closed Block Impaired Policyholders' Contractual Rights

45. Upon the effective date of the Plan, the Company converted to the New York Corporation also called "Metropolitan Life Insurance Company" that was wholly owned and operated by MetLife, Inc., a stock company. Policyholders only acquired Trust Beneficiary interests which provided them the right to become MetLife, Inc. shareholders, but only at a future date.

46. Under the Plan, the Company insurance policies remained in force and are now backed by a "Closed Block,"

which contains segregated assets allocated to pay claims and dividends on the existing policies. The Plan represented that the assets allocated to the Closed Block would produce cash flow, that, together with revenue generated from the Closed Block assets and policies, was expected to enable payment of future claims, taxes, and dividends (according to 1999 dividend scales, if the experience underlying those scales continued.)

47. The Closed-Block policies operate quite differently than the Company's "participating policies." As a result, the Closed Block constitutes a material revision and deprivation of Policyholders' rights under the Company's now rescinded charter and their former insurance contracts.

48. Prior to demutualization, Policyholders owned 100% of a financially sound mutual insurer with a solid earnings record of about 85 years. The Plan eliminated Policyholders' ownership and replaced it with an interest in the Closed Block controlled and operated by MetLife, Inc.

49. Prior to demutualization, Policyholders could exercise control by electing a Board. The Plan eliminated this right since the now existing MetLife Boards now operate the Corporation and the Closed Block. Thus, the Closed Block will not be governed by an elected Board, but instead by MetLife, Inc. and its Board and its Management, who must act in the interest of its stockholders, not for the former Company Policyholders, with respect to its decisions in connection with the Closed Block.

50. In addition, under the Plan, the assets in which Policyholders would otherwise have participated have been dramatically reduced. The costs of administering the

Closed Block are no longer paid out of Closed Block funds. Billions of dollars that would have been allocated to the Closed Block for payment of administration expenses (if they are, in fact, incurred). As a result, the pool of assets in the Closed Block is significantly reduced, and the Policyholders will no longer be able to save or benefit from cost cutting or expense reductions resulting in increased dividends. Thus, the Closed Block deprives Policyholders of the security and income provided by their ownership of their own mutual company.

4. The Use Of Anti-Takeover Provisions Precluded Fair Market Value

51. The Plan inserts "anti-takeover provisions" in MetLife, Inc.'s charter, by-laws, certificate of incorporation or stockholder rights plan. These provisions prevent the acquisition of MetLife, Inc. stock in a manner that could interfere with the MetLife, Inc. Board's and Management's control of the Corporation for a specified period of time, without prior approval of the Superintendent of the New York Insurance Department. The Conversion Law authorized such "anti-takeover" provisions. N.Y. INS. LAW § 7312(v). These "anti-takeover" provisions, by their very nature, depress the value of an otherwise freely traded stock company.

5. The Plan Impaired Substantial Contractual And Ownership Interests in the Company Without Just Compensation

52. Implementation of the Plan breached Policyholders' contractual rights under their Company charter and their life insurance contracts, and eliminated their

property rights without their consent, causing substantial damage. The Company's adoption of the Plan, therefore, was contrary to the Company charter.

53. The Company Charter, which incorporates New York law, provides that the Company's sole purpose was to provide life insurance coverage on a mutual basis. Under the charter, Policyholders owned an equitable interest in the Company. The Charter did not authorize implementation of the Plan. The Charter provides that the fair value of the Company should be distributed proportionately to Policyholders upon the surrender of the Charter, sale of the Company assets, or dissolution of the corporation. The Plan did not allow the Company to liquidate its assets. Instead, it provided that those assets would be retained by the then to be formed New York stock corporation.

54. The Plan repudiated the Company's Charter, Articles II, VII, VIII, IX and X (Exhibit C) because:

a. The Plan prevented the Company from continuing as a "mutual company without capital stock." Charter, Article VI;

b. MetLife acquired the Company's insurance policies and other contracts to terminate the Company Charter. Charter, Article VII;

c. The Plan terminated the Company's right to a portion of "the surplus earned by [MetLife] during the year . . . ." Charter, Article IX;

e. The Plan terminated the Company's right of "perpetual succession." Charter, Article X;

f. The Plan failed to distribute 100% of the Company's value, but instead, limited this value to the IPO price, incorporated anti-takeover provisions in the Plan and

prevented the sale of the Company or its assets from being determined in an open market in which MetLife, Inc.'s stock was unrestricted;

g. The Plan utilized an "Historic Plus" formula for allocating proportionate shares to Policyholders which was not authorized by the charter or Policyholders' contracts;

h. The Plan created a Closed Block which materially modified the charter and contractual interests that Policyholders had obtained upon purchase of the Company policy;

i. The Company Plan deprived Policyholders of ownership rights by forcing the exchange of their interests in the Company for restricted beneficiary Interests in a Trust;

j. The Company Plan allowed existing MetLife, Inc. and the Corporation's Board and Management, and other stockholders to obtain control of the Company's surplus and assets at a discount below fair market value; and

k. The Company Plan created a Closed-Block that negated Policyholders' then existing contractual interests, that was based upon assumptions different than those that supported Policyholders' participating policies, and that was underfunded.

55. The Company Plan also fundamentally altered Policyholders' charter, contractual and/or property rights and failed to provide fair market value at the time of taking these rights in at least the following ways:

a. ***Cash Elections***. Policyholders electing cash were not provided the fair market value of their ownership interests.

b. ***The Trust Agreement***. Under the Plan, owners of Trust interests were not treated identically or as favorably as MetLife, Inc. stockholders. Policyholders did not receive MetLife, Inc. stock, but only so-called "Trust Interests." Policyholders, unlike stockholders, thus only received second class status with substantially less rights than MetLife, Inc. stockholders. The primary purpose of the Trust was to benefit MetLife, Inc., and enable it to efficiently manage the "administrative complexity" and reduce the "extraordinary costs associated with mailings to millions of stockholders . . . ;" which would have had a "negative effect [ ] upon the projected earnings of MetLife [Inc.]." Ex. E, Sup. Op. ¶ 45.

c. ***The Withdrawal Of Trust Shares And Transfer Of Trust Interests***. Unlike MetLife, Inc. stock, MetLife Trust Interests were not freely transferrable. Certain owners of the Trust Interests with a limited number of Trust Interests could withdraw and sell *all*, but not part, of their Trust Interests. The owners of the Trust Interests could not transfer their so-called Trust Interests except in limited circumstances, i.e., to a spouse, charity, Trust or under a will. The Superintendent acknowledged that "Transfers will be permitted only in [ ] *limited* circumstances." (Emphasis added) Ex. E, Sup. Op. ¶ 53.

d. ***Distributions and Dividends***. The owners of the Trust Interests had no right to be paid MetLife, Inc. distributions and dividends simultaneously upon payment to all other MetLife, Inc. stockholders. In fact, dividends payable to the owners of the Trust Interests could be

delayed up to ninety days. Ex. E, Sup. Op. ¶ 56. The Trustee could, however, at its own expense, pay MetLife, Inc. to pay the owners of the Trust Interests their distributions and/or MetLife, Inc. simultaneously with all MetLife, Inc.s' other distribution and dividend payments. This unique Trust provision deprives Policyholders from the use of their money from distribution and dividend payments at the same time as all MetLife, Inc. stockholders receive their distribution and dividend payments.

e. *Fiduciary Duties*. Significantly, the Plan only provided that MetLife, Inc. "will take the interests of the owners of the Trust Interests into account as if they were stockholders "*except* to the extent any director determines, based on the advice of their counsel, that to do so would violate his or her duties as a Director under Delaware Law." (Emphasis added). The Superintendent explicitly found that the "directors of the Holding Company will [only] owe a fiduciary duty to act in the best interests of the Holding Company [MetLife, Inc.] and its stockholders." Ex. E, Sup. Op. ¶ 59. This means that the directors of MetLife, Inc. would *not* owe a fiduciary duty to act in the best interests (or even fairly and equitably) toward the former Policyholders with so-called Trust Interests.

f. *Voting Rights*. Unlike MetLife, Inc. stockholders, the owners of Trust Interests only have restricted voting rights. The owners of the Trust Interests can only vote on matters "outside the ordinary course of business, i.e., so-called 'Beneficiary Consent Matters.'" Unlike MetLife, Inc. stockholders, Trust Beneficiaries were required to pay to receive their own proxy materials on even those limited matters upon which they could vote. Ex. E, Sup. Op. ¶¶ 63 and 49. With respect to all other

matters where the Trust Beneficiaries have the right to vote, their Trustee is required to vote "in favor of and in opposition to the matter or abstain from voting on the matter, or abstain in accordance with the recommendations given by the board of directors of the Holding Company to its stockholders, or if no recommendation is given, as directed by the board of directors of the Holding Company." Ex. E, Sup. Op. ¶ 64. Therefore, the Trust Beneficiaries are not only denied the same right to vote as MetLife, Inc. stockholders, but their so-called "Trustee" can be required to vote *against* their best interests. The Superintendent found that the reason for not allowing the Trustee to vote as a Trustee *for* the Trust Beneficiaries was because treating all stockholders the same could "adversely affect [ ] the Holding Company, the IPO Price, and the value of the consideration received by the policyholders." Ex. E, Sup. Op. ¶ 65.

g. ***Termination of the Trust***. The MetLife, Inc. Board of Directors, as noted, owes *no* fiduciary duty to the Trust Beneficiaries, but only to its own stockholders under Delaware law. Termination of the Policyholders' Trust Interests is largely dependent on MetLife, Inc., which can terminate the Trust whenever the Trust shares are equal to or less than 25% of the outstanding shares of its Common Stock, or because of changes in the law. MetLife, Inc. can even terminate the Trust if it "is expected to become burdensome to the Holding Company [MetLife, Inc.]." Ex. E, Sup. Op. ¶ 69. MetLife, Inc. not only has the right to terminate the Trust, but also has the right to require its own Trust Beneficiaries to sell their Trust Interests to MetLife, Inc. "at a price equal to the average of the closing prices of the Common Stock on the twenty consecutive days *preceding* such offer." Ex. E, Sup. Op. ¶ 70.

h. ***The MetLife, Inc. Purchase And Sale Programs***. The Plan created, in essence, two classes of stockholders – MetLife, Inc. stockholders, and the owners of the Trust Interests, with greatly diminished rights, The Superintendent justified this "second class" stockholder classification in the Trust, because it would create a more orderly market that "should have a positive effect upon the IPO price and the post-IPO trading price of the common stock and the value of the consideration received by policyholders." Ex. E, Sup. Op. ¶ 79. Thus, large Trust Beneficiaries' (persons with over 25,000 Trust Interests) rights to sell or transfer their interests were severely restricted, and unlike stockholders, their interests could not even be freely traded.

i. ***Subscription Rights***. The New York legislature, in enacting the Conversion Law, explicitly recognized that, in the event of a demutualization, it would be in the Policyholders' interests to be provided subscription rights. Subscription rights would compensate Policyholders for expending tens of millions of dollars of their own surplus in the Company to convert the Company to a stock company. Here, Policyholders were denied subscription rights, and thus, were required to pay substantially more consideration for MetLife, Inc. shares, which, because they were held in Trust, were of less value than the MetLife, Inc. shares acquired by all other MetLife stockholders. The Superintendent, in balancing the conflicting interests between Trust Interests and stockholders, almost without exception, favored the stockholders over the Policyholders, because it was allegedly "necessary" to restrict the stockholder rights of the Trust Beneficiaries to insure an orderly trading market for the other stockholders. Ex. E, Sup. Op. ¶ 85. The Superintendent, therefore, concluded

that to deny Policyholders subscription rights "in the [unique] circumstances of the [Company] reorganization, [ ] is fair and equitable to policyholders."

j. *Top-Up Rights*. Policyholders were also denied "top-up" rights (which would have allowed them to participate in any short-time IPO sale price increase), solely because such rights "would not be well received by institutional investors, reducing the demand for the IPO of MetLife." Ex. E, Sup. Op. ¶ 88. However, as noted, Policyholders should have received some form of compensation for use of their Company surplus to fund 100% of the development and implementation of the Plan.

k. *Other Capital Fund Raising Transactions*. The Company stated in its November 1999 Policyholder Information Booklet that "because of market conditions." MetLife, Inc. could thereafter decide that "it is in the best interest of MetLife [the Company] and its policyholders" to raise capital through one or more so-called Other Capital Raising Transactions at the same time, and in addition to the IPO." Op. ¶ 89. These transactions included the right to offer the public, *inter alia*, "up to 500 million aggregate principle amounts of publicly offered debt securities."

56. *After* the Board elected to convert to a stock company and *after* the Company mailed its Informational Booklets to its policyholders, the market conditions for the then-planned MetLife, Inc. IPO purportedly deteriorated and the Company, on January 21, 2000, filed yet another registration statement with the SEC that stated a *new* intention to offer a private transaction to its institutional investors of $1 billion of so-called "units" under a so-called "forward contract" that would allow private institutional

investors a right to purchase MetLife, Inc. stock based on premium prices over the MetLife, Inc. IPO price and a preferred security to secure the "unit" holder, all structured so that "ratings agencies will accord the units a significant level of equity capital treatment." Ex. E, Sup. Op. ¶ 90. Policyholders were never notified of this new billion dollar private placement or provided an opportunity to vote on this radically changed plan caused by the radically changed market conditions.

57. This new billion dollar transaction injected yet a third conflicting group into the Plan. Where, under the November 1999 Plan, the Company had to allocate assets between their Policyholders and other stockholders, a need now existed to allocate assets between three conflicting groups – the Policyholders, all other stockholders, and now the private institutional investors who were to be provided, for the first time, a unique private placement opportunity to purchase MetLife, Inc. stock in the MetLife IPO.

58. The Plan provided that Policyholders would sell their ownership and control of the Company. Under the Plan, Policyholders were denied their right to achieve the fair market value of any required sale by allowing their mutual insurer to be sold on the open market to the highest bidder. To maximize value, a mutual insurer should be sold using the auction (free market) process. The Plan, however, provided for Policyholders to relinquish their legal right of control over the Company, yet the Plan deprived Policyholders of receiving the full, undiluted "control premium" aspect of fair market value they would otherwise have paid if the Company were sold in the free market by way of an auction.

59. The Plan did not provide a fair process for the distribution of the full value of the Company to Policyholders. A mutual to stock conversion requires a reasonable period of time for the insurer to adjust to its new stock operation and for the market to determine the insurer's value. Anti-takeover provisions are intended to delay full open market bidding or a hostile takeover of an insurer by prohibiting control premium offers for a period of time. The Plan implemented an unfair process to determine the value of the Company by limiting the valuation to the trading value of MetLife, Inc. stock on the IPO date, i.e., a single trading day. The process was unfair and improper since the true trading value or fair market value of MetLife, Inc. stock could not be determined until the expiration of the anti-takeover provisions. The restriction of stock by anti-takeover provisions caused the stock to be traded at a substantial discount to fair market or going concern value because, *inter alia*, these provisions precluded willing purchasers to offer Policyholders fair market value.

CLASS ACTION ALLEGATIONS

60. This class action is filed pursuant to Fed.R.Civ.P. Rules 23(a) and 23(b)(1), (b)(2) and (b)(3) on behalf of Policyholders that held the Company policies on or before the enactment of New York's Conversion Law (September 1, 1988), but excluding the Defendants and the Company Management.

61. The Class, which includes millions of Policyholders, is so numerous that it is impracticable to bring all Policyholders before the Court. The exact number of class members is unknown, but can be determined from the

records formerly maintained by the Company and now maintained by the Corporation and/or MetLife, Inc. In many instances, Policyholders either are unaware that claims exist or have sustained individual damages too small to justify the costs of bringing suit separately. When aggregated, however, Policyholders' damages are large enough to justify this class action.

62. Common questions of both law and fact affect the rights of each member of the Policyholder class, including, *inter alia*:

A. Did the approval of and implementation of the Plan constitute a taking of Policyholders' property rights, in violation of the Fourteenth Amendment of the Constitution, when Policyholders had no opportunity to vote on the final Plan?

B. Did the Plan violate the Commerce Clause of the Constitution?

C. Did the Plan violate the Impairment Clause of the Constitution?

D. Did MetLife, (the Corporation and/or MetLife, Inc.) act under the color of state law within the meaning of 42 U.S.C. § 1983?

E. Did the Plan deprive Policyholders of their property rights under the Takings Clause of the Fourteenth Amendment of the Constitution by using the "Historic Plus" method to determine the amount of their compensation?

F. Did the Plan deprive Policyholders of their property rights under the Takings Clause of

the Fourteenth Amendment of the Constitution by giving them only "*contingent* compensation" based on the price of MetLife, Inc. stock on the date of its IPO?

G. Did the private and state Defendants, acting individually and in concert, under 42 U.S.C. § 1983, unconstitutionally impair Policyholders' contractual rights, as set forth in their Company Charter with the State of New York, and their participating policies of insurance, including, *inter alia*:

(1) Control (voting) interest in the Company?

(2) Interest in the Company's surplus and other assets?

H. Did the private and state Defendants, acting individually and in concert, unconstitutionally take Policyholders' control and property rights in the Company, without the requisite public use interest that would justify the taking or impairment of contract?

63. Representative Plaintiffs, Stephen Tancredi and Ronald Speidel, will assure the adequate representation of all class members. Their claims are typical of the class claims. They have no conflict with class members in the maintenance of this action, and their interests in this action are antagonistic to Defendants' interests. They will vigorously pursue the class claims. They are aware that they cannot settle this action without Court approval.

64. Representative Plaintiffs can acquire the financial resources to litigate this action. Moreover, undersigned counsel have agreed to pay all reasonable costs to litigate this action.

65. Undersigned counsel, Malakoff Doyle & Finberg, P.C. and Milberg Weiss Bershad Hynes & Lerach, are experienced in litigating class actions and have handled many such actions in the state and federal courts for and on behalf of other policyholders. Counsel are handling this case on a contingent basis and will receive compensation for their professional services only as awarded by this Court.

66. A class action provides a fair and efficient method of adjudicating this controversy. The substantive claims of the Representative Plaintiffs and the class members will require evidentiary proof of the same kind and application of the same law, since Defendants have treated all class members in a similar and/or identical manner.

67. There are no known unusual legal or factual issues which would cause Management problems not normally and routinely handled in class actions, and because damages may be calculated with mathematical precision, the cost of administering the class fund will be minimized. Because class members may be unaware that their rights have been violated, or, if aware, would be unable to litigate their claims on an individual basis because of their relatively small damages, a class action is the only practical proceeding.

STATEMENT OF THE CLAIMS

COUNT I

(Unconstitutional Taking Resulting from Valuing Policyholders' Company Interests On Only One Trading Day)

68. The foregoing paragraphs are incorporated.

69. The Fifth Amendment to the Constitution provides " . . . nor shall private property be taken for public use, without just compensation." The Fifth Amendment is applicable to the states under the Fourteenth Amendment. This "Takings" clause generally prohibits a state from taking property from one private party primarily for the purpose of benefitting another private party. Private property can be taken and sold to another private party for just compensation, but only when to do so serves a public use.

70. The State and the Company agreed to rescind the 1915 Charter and to take the ownership interests of Policyholders and to transfer them to MetLife. MetLife fully participated with the state to obtain this objective. This agreement failed to provide Policyholders just compensation or complete restitution by reason of the Company's contract repudiations, and by not providing fair market value to Policyholders at the time of the taking.

71. The payment of cash or policy credits based upon the MetLife, Inc. IPO price on a single day did not provide fair market value to Policyholders. The issuance of "Trust Interest" also failed to provide fair market value at the time of the taking.

72. "Just Compensation" means the payment of fair market value at the time of the taking. "Just Compensation" is *guaranteed*, not contingent compensation based on the market risks and market fluctuations. Nor is "just compensation" determined by an IPO on the first day (and only one day) of trading.

73. Policyholders were also required to pay huge costs of demutualization and thus paid for the costs of the new stockholders (that had not previously been Policyholders) to obtain control. The cost of obtaining control should be paid by those obtaining control, not those losing control.

74. All Policyholders received at least 10 MetLife, Inc. shares for their control interests. Under the Plan, Policyholders, in exchange for their property interests in the Company, were not even advised in advance precisely how many shares (or how much cash) they would receive for their valuable property interest in the Company. They were not guaranteed any sum certain for their valuable Company property interests.

75. Policyholders were initially only advised that their Company's book value was $18.36 per share and that the MetLife, Inc. stock, upon conversion, was estimated to sell between $15 and $24. Shortly thereafter, the estimated sale price was drastically reduced to between $13 and $16 per share. This wide range of valuation illustrates that the Company (and its financial advisors) were unable to accurately predict the value of the contingent compensation to be paid Policyholders.

76. The Plan's proposed "Closed Block," as explained above, also failed to provide "just compensation."

77. It is not "just compensation" within the meaning of the United States Constitution "Takings" clause to pay contingent compensation in stock in a newly formed Delaware stock company (MetLife, Inc.) or, alternatively, based on the trading price of the new MetLife, Inc. IPO stock on only one trading day or by the application of the proposed "Closed Block." This is especially true where, as here, the MetLife, Inc. stock is deflated because of its numerous "anti-takeover" provisions.

78. The Policyholders have been damaged by not being provided just compensation and are therefore entitled to damages from MetLife under 42 U.S.C. § 1983.

COUNT II

(Unconstitutional Taking Resulting from Valuing Policyholders' Membership Interests on the Historic Plus Allocation Method – Stating a Damage Claim Under Section 1983)

79. The foregoing paragraphs are incorporated.

80. In 1915, unable to fully carry out its primary objective – to provide life insurance at the best price to its policyholders – the Company (then also a stock company), converted to and commenced operations in New York as a mutual life insurance company.

81. For 85 years, from 1915 to 2000, the Company operated as a New York mutual insurer because it and the state had concluded that operating as a stock company created duties inconsistent with its primary objective – to provide life insurance to its policyholders at the best possible price. As a New York mutual insurer, the Company could sell life insurance to its members *at cost*.

82. In 1988, the New York State Legislature enacted a statute that authorized the conversion of a New York mutual life insurance company to a Delaware stock company. N.Y. INS. LAW § 7312. Here, this law was applied retroactively to divest Policyholders of their already vested interests in the Company's surplus and other assets.

83. The Company Plan provided that each Policyholder was to be allocated a number of shares in MetLife, Inc. based upon a set formula. The formula allocated shares based on both a fixed component and a variable component.

A. The fixed component allocated ten shares for each policy owned by a Policyholder on the Plan's effective date.

B. The variable component allocated a certain number of shares based upon a formula purportedly intended to reflect each participating policy's contributions to the Company's surplus both historically *and prospectively*. The allocation formula, called "Historic Plus," was based upon an actuarial theory which allocated relatively more shares to policyholders that had recently acquired their policies.

84. The "Historic Plus" formula applied by the Company therefore allocated consideration to be paid Policyholders based, in part, on *projected future* surplus contributions. The Historic Plus method deviated from the Company's own longstanding policy and practice of distributing surplus to Policyholders based upon a historical formula. The Historic Plus method was contrary to New York law in force when the Company was chartered in 1915 and for at least the next 73 years

thereafter, until the enactment of New York's Conversion Law in 1988. The Historic Plus formula is also contrary to the 1915 Company Charter.

85. The Company's use of a "Historic Plus" method of allocating its assets violated the "Takings" clause of the Constitution. This taking was accomplished through the State of New York's, the Company's, and MetLife's joint participation. Policyholders therefore request damages for losses caused by the use of the "Historic Plus" method under 42 U.S.C. § 1983.

COUNT III

(Unconstitutional Process Before the Taking [Inadequate Notice And Hearing])

86. The foregoing paragraphs are incorporated.

87. The New York legislature enacted the Conversion Law, under which there could be no taking of a mutual policyholder's property until and unless the Superintendent found the demutualization plan to be "fair and equitable to all policyholders." N.Y. INS. LAW § 7312.

88. The New York legislature created a substantial exception to its "fair and equitable to all policyholders" standard that allowed a mutual insurer to amend its demutualization plan *after* the proposed plan was distributed to its policyholders, and *without* further notice to its policyholders, and *without* providing them any opportunity to vote on the actual amended plan to be considered by the Superintendent.

89. If a subsequent amendment occurred after the initial plan was distributed to policyholders, the Superintendent only had to find that the amendment was not "materially disadvantageous to any of the policyholders."

90. After the Policyholders' vote, the Plan was materially amended so that over $1 billion of Policyholders' property was taken so it could be sold to two private parties – the Credit Suisse group or an affiliate, and Banco Santander or an affiliate.

> On March 9, 2000, in response to recent developments in the capital markets, MetLife [the Company] further amended the Plan to permit the Company to conduct Private Placements of Common Stock concurrently with the IPO. MetLife [the Company] proposed to sell to each of Credit Suisse Group or an affiliate ("Credit Suisse") and Banco Santander Central Hispano, S.A. or an affiliate ("Banco Santander" and, collective with Credit Suisse, the investors") between a minimum of 1.0% and a maximum of 4.9% (2.0% and 9.8% in the aggregate) of the outstanding shares of Common Stock (the "Restricted Stock"). The exact number of shares to be sold and purchased will, subject to such minimum and maximum amount, be determined by the Company in its discretion, based on the advice of Goldman, Sachs or such other investment bank that is approved by the Superintendent.

Ex. E, Sup. Op. ¶ 95.

91. The Superintendent found that March 1999 Taking was not "materially disadvantageous" to the Policyholders:

> Pursuant to Section 10.4 of the Plan and Section 7312(f), the Company is permitted to amend the Plan after the public hearing or the policyholder vote, without a further hearing or vote, unless the Superintendent determines that the amendment is materially disadvantageous to any of the policyholders. *The Private Placements are not materially disadvantageous to any of the policyholders.* (Emphasis added).

Ex. E, Sup. Op. ¶ 100.

92. The documents distributed to Policyholders, and upon which they voted, did not even hint that about 10% of the total anticipated stock interests could be sold to two private entities, neither of which were located in New York. Policyholders were never given an opportunity to vote on this actual Plan, as approved by the Superintendent.

93. The Superintendent, in his April 9, 2000 opinion, did not consider whether this actual Plan was in the "interests of the state to maintain a financially sound and competitive life insurance industry in this state [i.e., New York]."

94. Policyholders submit that the New York Conversion Law did not allow MetLife to take and sell almost a controlling interest to two privately held corporations, without allowing the Policyholders any opportunity to vote on this Plan.

95. The Company Plan, therefore, violated their due process rights and constituted an unconstitutional taking, providing them the right to recover damages from MetLife under 42 U.S.C. § 1983.

COUNT IV

(Violation of the Commerce Clause)

96. The foregoing paragraphs are incorporated.

97. The Commerce Clause, Art. I, Section 8, clause 3 of the Constitution provides: "[T]he Congress shall have power to regulate commerce . . . among the several States." U.S. Const. Art. I, Sec. 8, cl. 3.

98. Policyholders are protected by the state laws where their Company policies were delivered. When the Company repudiated its contracts pursuant to the Plan, Policyholders were entitled to complete restitution as provided by the state law where their policies were delivered.

99. Section 7312(4)(A) of the Conversion Law (pursuant to which the Plan was approved), failed to require that Policyholders' restitution damages caused by the implementation of the Plan be determined by the law of damages under the state law where each Policyholder's policy was delivered. Instead, Section 7312(4)(A) only provides that the Superintendent approve any method of consideration as "fair and equitable." N.Y. INS. LAW § 7312(4)(A).

100. States outside of New York have a greater interest in protecting insurance contracts entered into within their boundaries than New York has in regulating its insurance industry.

101. New York state has virtually no interest in allowing a *New York* mutual insurer to convert to a *New York* stock company that is wholly owned and controlled by a Delaware stock corporation, i.e., MetLife, Inc.

102. The Company's breaches of contract occurred in the state in which the policy was formed, which was usually outside of New York.

103. The application of New York's Conversion Law to repudiate the Company's Charter violated the Commerce Clause of the Constitution, entitling Policyholders (outside of New York) to recover damages from MetLife under 42 U.S.C. § 1983.

COUNT V

(Unconstitutional Impairment of Contract – The Policyholders' Right to Vote)

104. The foregoing paragraphs are incorporated.

105. The Fifth Amendment of the Constitution provides that no state shall enact any "law impairing the obligations of contracts. . . . "

106. Under the Company's Charter and their mutual participating policies, Policyholders had ownership and control of the Company.

107. The implementation of the Plan impaired the rights of all Policyholders in the Company.

108. To satisfy New York's demutualization requirement, about 11 million Policyholders were provided a two volume bound treatise advising them of their right to vote. Less than 25% of the policyholders, in fact, voted for the Plan, i.e., only about 2,572,832 Policyholders.

A. However, *all* Policyholders were denied the right to vote on the *actual Plan* that was eventually approved by the Company Board. Even those few Policyholders that had

expressed an active interest in the Plan as represented by a vote were thereafter denied an opportunity to vote on the Company's actual demutualization plan to provide for a private placement of up to 9.8% of the total shares of MetLife, Inc. stock to be issued.

B. Moreover, a significant portion of the distinct minority of Policyholders voting for the Plan were MetLife employees or its affiliates. The Company retained State Street Bank to cast their vote in favor of the Plan.

C. Thus, the minority of Policyholders voting for the Plan was not even close to a simple majority of policyholders, but was substantially under 25%.

109. The Company knew (or recklessly disregarded) that few Policyholders would be likely to vote. It, therefore determined that a failure to vote would be disregarded and that only "eligible" Policyholders' votes would be counted. "Eligible" was carefully defined so as to include *only* those few Policyholders that in fact voted and to exclude the vast majority (i.e., about 8 million) of the other non-voting policyholders.

110. MetLife's and the Company's impairment of Policyholders' right to vote with respect to the *actual* Plan caused Policyholders damages.

111. Policyholders are therefore entitled to recover damages from MetLife under 42 U.S.C. § 1983 for the Company's repudiation of their mutual participating Policyholder interests.

COUNT VI

(Unconstitutional Impairment of Contract – The Mutual Surplus)

112. The foregoing paragraphs are incorporated.

113. Policyholders each paid for a participating policy in a New York mutual insurer, i.e., the Company. The Company had a charter that explicitly provided in Article VIII that it was required to maintain books and accounts which apportioned net surplus annually. The Company explicitly stated that "net surplus *shall* be apportioned to the policyholders [annually] entitled to share them." The Company's use of a "Historic Plus" method for distributing the Company's net surplus was (1) inconsistent with the Company's Charter and (2) inconsistent with the Company's and its Policyholders' interpretation of its Charter from 1915 through 2000 – a time period of about 85 years.

114. Under the Company's Charter, Article IX, it was explicitly provided that: the Company's net surplus was to be determined historically only, and on an annual basis. It directed that "the MetLife Mutual directors *shall* annually cause a statement to be made . . . and *shall quite* well and truly ascertain the surplus *earned* by the corporation during the year . . . ." (Emphasis added). This allocation of post surplus "*shall* be binding and conclusive upon every person entitled to share in said surplus." (Emphasis added). The Company Board therefore had no right to *re*allocate the Company's surplus based on a so-called "Historic Plus" method, which speculates as to surplus to be earned in the future and negates the allocation of surplus based on the surplus in fact "earned by the corporation during the year."

115. Policyholders are therefore entitled to recover damages from MetLife under 42 U.S.C. § 1983 for the Company's and MetLife's repudiation of the mutual participating Policyholders' interests.

COUNT VIII

(Unconstitutional Impairment of Contract – To Benefit Special Private Interests)

116. The foregoing paragraphs are incorporated.

117. With New York's affirmative consent from 1915 to April 4, 2000, New York allowed the Company to sell Policyholder Membership interests and mutual life insurance policies at cost. Tens of millions of policyholders expended billions of dollars to purchase mutual life insurance policies sold by the Company.

118. Until September 1, 1988, a time period of 73 years, New York did not even have an insurance conversion law that would have alerted mutual policyholders that their mutual life insurance policies could be taken from them. This was because the Conversion Law had not yet been enacted by the State of New York.

119. As applied here, two private parties (Metropolitan Life Insurance Company, a stock company, and MetLife, Inc., the owner of all the Metropolitan Life Insurance Company stock), have been assisted by the State of New York to repudiate its contracts of mutual life insurance with other private parties – the Policyholders. New York, however, cannot constitutionally pass an ex-post facto law that, directly or indirectly, destroys the pre-existing property rights of millions of Policyholders to benefit

MetLife and two of its private investors, Credit Suisse group and Banco Santander.

120. The Company, MetLife, and the Superintendent applied the Conversion Law in violation of the U.S. Constitution by the creation and/or authorization of the Plan which:

A. Violated the state's charter agreement with Policyholders;

B. Violated the Company's charter agreement with the State of New York, which was intended to protect and benefit Policyholders;

C. Violated Policyholders' property rights in the Company which required it to operate as a New York mutual insurer and prohibited it from operating as a stock company;

D. Violated Policyholders' control rights in the Company;

E. Violated Policyholders' property rights to purchase insurance from the Company *at cost*;

F. Violated Policyholders' property rights to participate in the Company's future costs and expense savings; and

G. Misappropriated Policyholders' contract and other property rights in the Company's surplus and other assets when the Board and the Superintendent:

(i) Authorized the use of those assets to develop a plan to terminate the operation of the Company as a mutual insurer;

(ii) Authorized the use of those assets to pay MetLife Management to develop a plan to terminate the Company; and

(iii) Authorized the use of the Company assets to pay outside financial consultants and legal advisors to develop a plan and otherwise advise the Company Board on how to terminate the Company and to start up a new stock company (MetLife, Inc.) in Delaware.

121. There was no authority that existed under the Company's Charter that allowed the Company to expend tens of millions of dollars of the Company's surplus and other assets to develop a plan to terminate the Company as a mutual insurer to convert it to a New York stock corporation and thereafter, to make it into a wholly owned subsidiary of a Delaware stock corporation (MetLife, Inc.)

122. Policyholders are therefore entitled to a damage remedy from the MetLife Defendants that participated in this scheme to deprive them of their Company interests under 42 U.S.C. § 1983 for the repudiation of their mutual participating Policyholder interests.

REQUEST FOR RELIEF

WHEREFORE, for the foregoing reasons, representative and Class Metropolitan Life Insurance Company Policyholders as of September 1, 1988 respectfully request judgment be granted in their favor and in favor of other former mutual Policyholders for any and all damages, attorneys fees, costs and expenses against MetLife, Inc. and Metropolitan Life Insurance Company as allowed

under 42 U.S.C. § 1983 and 42 U.S.C. § 1988. No equitable relief is requested in this case.

A Jury Trial Is Requested.

Respectfully submitted,

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Dated: September 15, 2000

METROPOLITAN
DEMUTUALIZATION DIFFERENTIATIONS

Metropolitan Life Insurance Company	(a New York mutual)	"Company"
Metropolitan Life Insurance Company	(a New York stock company)	"Corporation"
MetLife, Inc.	(a Delaware stock corporation)	"Holding Company"
MetLife	MetLife Inc. and Corporation	"MetLife"
Plan	The conversion of the "Company" to a "Corporation" that is wholly owned by the "Holding Company"	

Supreme Court, U.S.
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No. 02-1542

IN THE

Supreme Court of the United States

STEPHEN TANCREDI and RONALD SPEIDEL,

Petitioners,

—v.—

METROPOLITAN LIFE INSURANCE COMPANY and METLIFE, INC.,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

BRIEF IN OPPOSITION

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QUESTIONS PRESENTED

The Court of Appeals held that the complaint, which asserted claims against an insurance company and its corporate parent, properly was dismissed on the ground that it did not plead circumstances constituting state action, which is a required element of all of Petitioners' claims. The Petition purports to raise the following questions:

1. Was the decision of the Court of Appeals inconsistent with *Phillips Petroleum Co. v. Jenkins*, 297 U.S. 629 (1936)?

2. Was the decision of the Court of Appeals inconsistent with *Brown v. Legal Foundation of Washington*, 123 S. Ct. 1406 (2003)?

PARTIES AND CORPORATE DISCLOSURE STATEMENT

All of the parties to the proceeding below are listed in the caption. Respondent MetLife, Inc. is the corporate parent of Respondent Metropolitan Life Insurance Company. There is no other parent or publicly held company owning 10% or more of a Respondent's stock.

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STATEMENT OF THE CASE

This action challenged the Plan of Reorganization (the "Plan") of Metropolitan Life Insurance Company ("MetLife"). Under the Plan, MetLife changed its form of corporate organization from a mutual life insurance company to a stock life insurance company, a process known as demutualization. The Plan was adopted unanimously by MetLife's board of directors, and was approved by a 93% vote of MetLife policyholders who voted. App. 3, 4, 9. Following a public hearing, the Plan also received the approval of the Superintendent of Insurance of the State of New York (the "Superintendent") as meeting all statutory requirements, including the requirement that the Plan be "fair and equitable" to policyholders. App. 67-169. The Plan became effective on April 7, 2000. App. 14.

The main purpose for the demutualization was to change the structure of the company in a way that will increase its potential for long-term growth and financial strength. App. 82, ¶ 32. Under the Plan, eligible policyholders such as Petitioners received consideration in exchange for their membership interests in MetLife as a mutual company. This consideration took the form of trust interests in stock, cash or policy credits, representing 100% of the equity ownership of MetLife prior to demutualization. App. 84-85, ¶ 39; App. 125, ¶ 121.

Petitioners commenced this action against MetLife and its new parent company, MetLife, Inc., in the United States District Court for the Southern District of New York. App. 170-217. The amended complaint purported to assert claims for damages against MetLife and MetLife, Inc. pursuant to 42 U.S.C. § 1983 for alleged violations of the Takings Clause of the Fifth Amendment,

the Due Process Clause of the Fourteenth Amendment, the Contracts Clause of Article I, § 10, and the Commerce Clause of Article I, § 8, arising from MetLife's adoption of the Plan. App. 202-215. The amended complaint alleged that MetLife and MetLife, Inc. were "state actors" and acted "under color of state law" in adopting and implementing the Plan, on the grounds that state law authorized the demutualization and the Plan was approved by the Superintendent. App. 182-183, ¶¶ 31-34.

Respondents moved to dismiss the amended complaint, both for lack of state action and lack of any substantive constitutional violation, or in the alternative, to stay the action on grounds of abstention. App. 14-15. The District Court granted Respondents' motion to dismiss, App. 14-31, ruling that Petitioners' amended complaint failed to allege facts amounting to state action or action under color of state law, App. 16-20. The District Court also held that even if state action had been established, Petitioners' amended complaint failed to allege any substantive constitutional violation. App. 20-30. A final judgment was entered dismissing the action. App. 13.

Petitioners appealed to the United States Court of Appeals for the Second Circuit. After briefing and argument, the Second Circuit affirmed the judgment of the District Court on January 21, 2003, App. 1-10, on the ground that "the district court correctly dismissed the complaint for lack of a sufficient allegation of state action," App. 6. In a unanimous opinion written by Judge Kearse, the panel observed that under this Court's precedents, "[i]n order to satisfy the state action requirement where the defendant is a private entity, the allegedly unconstitutional conduct must be 'fairly attributable' to the state." App. 7 (citing *American Mfrs. Mut. Ins. Co. v.*

Sullivan, 526 U.S. 40, 50 (1999)). Applying this Court's settled precedents, the Second Circuit also observed that state approval of an action by a regulated entity "does not constitute state action 'where the initiative comes from [the private entity] and not from the State' and the state 'has not put its own weight on the side of the proposed practice by ordering it.'" App. 8 (quoting *Jackson v. Metropolitan Edison Co.*, 419 U.S. 345, 357 (1974); also citing *American Mfrs.*, 526 U.S. at 52, and *Flagg Bros., Inc. v. Brooks*, 436 U.S. 149, 164 (1978)). Applying these principles, the Second Circuit held that demutualization was not state action because the transaction was initiated by the company's management and board of directors and approved by its policyholders. App. 9-10.

Plaintiffs subsequently filed their petition for a writ of certiorari (the "Petition") with this Court on April 21, 2003. On the same day, plaintiffs' attorneys filed a petition for certiorari in *Gayman v. Principal Financial Services*, No. 02-1551. *Gayman* involved similar claims against another company brought by the same lawyers, and its dismissal had recently been affirmed by the Seventh Circuit. *See Gayman v. Principal Fin. Servs.*, 311 F.3d 851 (7th Cir. 2002).

REASONS FOR DENYING THE WRIT

There is nothing remarkable about the decision below, which flows obviously and directly from this Court's settled case law on the requirement of state action. Petitioners' contention that the case is inconsistent with *Phillips Petroleum Co. v. Jenkins*, 297 U.S. 629 (1936), and *Brown v. Legal Foundation of Washington*, 123 S. Ct. 1406 (2003), is frivolous. *Phillips Petroleum* did not even involve the issue of state action. Moreover, *Phillips Petro-*

leum and *Brown*, unlike the present case, involved challenges to state laws that imposed mandatory obligations on private conduct. Here, however, Petitioners challenged a privately initiated and implemented transaction that was merely permitted under state law. Under this Court's settled precedent, mere permission by the state does not transform private conduct into state action.

In any event, if Petitioners genuinely believed that the Plan did not provide adequate compensation, ample remedies were available under state law. No constitutional issues are implicated.

I.
The Decision Below Raises No Issues Warranting This Court's Review, As It Follows Directly from This Court's Settled Precedent on the Issue of State Action.

The decision below raises no question of federal law that has not been settled by this Court. Rather, the decision follows easily from a straightforward application of this Court's precedents on the state-action requirement.

The amended complaint purports to state claims under 42 U.S.C. § 1983 for violation of the Takings Clause of the Fifth Amendment as applied to the states by the Due Process Clause of the Fourteenth Amendment, and for violation of the Contracts Clause of Article I, § 10.[1] A necessary element of each of these claims is "state action,"

---

[1] The Complaint also purported to raise Commerce Clause and procedural due process claims, which also require state action, but Petitioners do not raise those claims in the Petition.

which requires that the alleged constitutional deprivation be undertaken by a "state actor." *See American Mfrs.*, 526 U.S. at 50 (under Fourteenth Amendment, state action requires that the alleged constitutional deprivation be undertaken by a "state actor"); *Blum v. Yaretsky*, 457 U.S. 991, 1002 (1982) (Fourteenth Amendment "erects no shield against merely private conduct"); *Rendell-Baker v. Kohn*, 457 U.S. 830, 838 (1982) ("under color of law" requirement of 42 U.S.C. § 1983 means "the same thing as the 'state action' required under the Fourteenth Amendment"); U.S. Const., Art. I, § 10 ("No *State* shall . . . pass any . . . Law impairing the Obligation of Contracts") (emphasis added); *see also Brown*, 123 S. Ct. at 1421 (rejecting Takings Clause claim to extent alleged taking resulted from private action rather than state action).

Petitioners cannot satisfy the state action requirement because the Respondents are private entities and not state actors. The starting point for the analysis of allegations of state action is to "identif[y] the specific conduct of which the plaintiff complains"—here, the adoption and implementation of the Plan. *American Mfrs.*, 526 U.S. at 51. Petitioners' claims plainly fail because that purely private decision is not "fairly attributable to the state," *id.* at 50, as the Court of Appeals correctly recognized.

Petitioners seek to characterize the adoption and implementation of the Plan as state action because it was authorized by state law and received regulatory approval. As this Court expressly has held, however, "[a]ction taken by private entities with the mere approval or acquiescence of the State is not state action." *American Mfrs.*, 526 U.S. at 52; *accord Blum*, 457 U.S. at 1004 ("Mere approval of or acquiescence in the initiatives of a private party" pursuant to statute does not transmute that private initiative

into state action); *Jackson*, 419 U.S. at 357 (approval by state agency of private company's business decision "does not transmute" that private initiative into state action). The Plan was proposed by MetLife's management, adopted unanimously by MetLife's board of directors, approved by an overwhelming vote of MetLife's policyholders, and implemented by MetLife and MetLife, Inc. through an initial public offering and the distribution of consideration to MetLife's policyholders. App. 9. In holding that the state action requirement was not satisfied, the Court of Appeals reached the only conclusion possible under this Court's settled precedents. *See, e.g., American Mfrs.*, 526 U.S. at 52 (test is whether state "has exercised coercive power or has provided such significant encouragement, either overt or covert, that the choice must in law be deemed to be that of the State").

Just last month, the District Court in this case granted Respondents their attorneys' fees under 42 U.S.C. § 1988 on the ground that this suit was "'frivolous, unreasonable or groundless.'" *Tancredi v. Metropolitan Life Ins. Co.*, 2003 WL 1842877, at *3 (S.D.N.Y. Apr. 8, 2003) (citing *Christianburg Garment Co. v. EEOC*, 434 U.S. 412, 422 (1978)). Indicating how straightforward the result in this case was, the District Court observed:

> [T]he governing standards were clear from cases decided well before plaintiffs brought this action. "Action taken by a private entity constitutes state action only when 'there is such a close nexus between the State and the challenged action that seemingly private behavior may be fairly treated as that of the State itself.'" Under established Supreme Court precedent, the fact that state law authorized the challenged action by an otherwise

> private entity or that the state granted approval without "put[ting] its own weight on the side of the proposed practice by ordering it" did not convert otherwise private action into state action. Thus, plaintiffs' state action theory was inconsistent with controlling decisions of the United States Supreme Court, and there was no responsible basis for seeking a change in the law.

Id. at *4 (footnotes omitted).[2]

Petitioners misstate the holding of *Lugar v. Edmondson Oil Co.*, 457 U.S. 922, 937 (1982), in arguing that state action is established merely by showing that the defendant has exercised a right or privilege created by the state. Pet. 9. In fact, *Lugar* holds that *in addition* to the exercise of a right or privilege created by the state, state action also requires that:

> the party charged with the deprivation must be a person who may fairly be said to be a state actor. This may be because he is a state official, because he has acted together with or has obtained significant aid from state officials, or because his conduct is otherwise chargeable to the State.

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[2] The District Court's recent fee order is not before this Court on this Petition. In awarding fees, the District Judge noted that he had never before granted attorneys' fees to a prevailing defendant under § 1988, and that "[a]ccess to the courts to vindicate claims of constitutional right is too important to do so lightly." 2003 WL 1842877, at *5. The District Court added, however, that "[b]oth societal and institutional interests . . . demand that such relief be available where the process is seriously abused. That is what occurred here." *Id.*

> Without a limit such as this, private parties could face constitutional litigation whenever they seek to rely on some state rule governing their interactions with the community surrounding them.

Id. at 957; *see also Flagg Bros.*, 436 U.S. at 156 (warehouse operator's sale of plaintiff's goods, though authorized by statute, was not state action). As the Court of Appeals recognized, nothing in Petitioners' amended complaint suggests that the state coerced or significantly encouraged Respondents to adopt or implement their Plan, or that the state was entwined in Respondents' management. App. 9.

Petitioners' attempt to portray a private corporation's decision to reorganize as an exercise of the state's "reserved power," Pet. 6-12, also is insufficient to establish state action under the settled precedent of this Court. To establish state action on the ground that a private entity is exercising a state function, a plaintiff must show that the private entity is exercising core governmental functions that are "the *exclusive* prerogative of the State." *Rendell-Baker*, 457 U.S. at 842 (quoting *Jackson*, 419 U.S. at 353 (emphasis added by Court); holding that education of special-needs children was not state action under "public function" theory, even when funded by state); *see also Blum*, 457 U.S. at 1011 (same, with regard to nursing home receiving public funds). Private decisions regarding the organization of private corporations, though authorized by state law, do not fall into this very narrow category. As the Court of Appeals recognized, "[t]he management of a corporation is not a public function; and a state's permission of a corporation to organize itself in a particular manner is not the delegation of governmental authority." App. 8; *accord Gayman*, 311 F.3d at 853. The

decision to undertake such private corporate changes is not even the type of decision that the state commonly makes, much less a decision that is inherently the exclusive prerogative of the state. *See Blum*, 457 U.S. at 1011; *Rendell-Baker*, 452 U.S. at 842; *Jackson*, 419 U.S. at 352-53.

II.
The Decision Below Does Not Conflict With Any Decision of Another Federal Court of Appeals or of This Court.

Petitioners' suggestion that there is a conflict among the federal Courts of Appeals on the state action issue in this case, Pet. 4, is incorrect. Every federal Court of Appeals to have considered the question has concluded that a corporate reorganization, where authorized by statute but initiated by the corporation itself, does not constitute "state action" or "governmental action" under this Court's precedents. *See Cranley v. National Life Ins. Co.*, 318 F.3d 105, 111-13 (2d Cir. 2003); *Gayman*, 311 F.3d at 853; *Broad v. Sealaska Corp.*, 85 F.3d 422, 430-31 (9th Cir. 1996); *Ordower v. Office of Thrift Supervision*, 999 F.2d 1183, 1187 (7th Cir. 1993); App. 7-10. Although Petitioners claim that these cases conflict with *Ohio State Life Insurance Company v. Clark*, 274 F.2d 771 (6th Cir. 1960), the *Clark* case did not consider or address the issue of state action. Review by this Court is unnecessary in view of the unanimity of the federal Courts of Appeals that have considered this point, and the absence of any difficult question of law.

Petitioners also have no basis for their assertion that the decision below "disregard[ed] as outdated" this Court's decision in *Phillips Petroleum Co. v. Jenkins*, 297 U.S. 629

(1936), or construed subsequent cases as "*sub silentio* overruling" the *Phillips Petroleum* decision. Pet. i. In fact, the opinion of the Court of Appeals does not even cite *Phillips Petroleum*, which has no bearing on the issue of state action.

Phillips Petroleum involved a challenge to the constitutionality of a state statute imposing liability on corporations for injuries sustained by their employees as a result of the negligence of co-employees. The Court held that this law, which "substitutes the rule of respondeat superior for the common-law fellow-servant rule," was reasonably related to government interests and consistent with both the Contracts Clause and the Equal Protection Clause. 297 U.S. at 636. As part of its ruling, the Court observed that the state's reserved power to amend laws affecting corporations defeated the petitioner's Contracts Clause claim. *Id.* at 634. The Court also noted that "[t]he reserved power is not unlimited and cannot be exerted . . . to take property without compensation." *Id.*

Contrary to the impression Petitioners attempt to create, Pet. 10, the presence of state action was not in dispute in *Phillips Petroleum*. Moreover, that case involved the imposition of liability on corporations by state law. Here, in stark contrast, Petitioners challenged a corporate decision initiated and implemented by a private corporation. As this Court's cases make clear, a private decision to exercise a right granted by statute is not "state action," absent coercion or significant encouragement that demon-

strates that the decision is attributable to the state. *See, e.g., American Mfrs.*, 526 U.S. at 52.[3]

Accordingly, petitioners cannot satisfy the state-action requirement. The *Phillips Petroleum* language cited by Petitioners addresses only substantive restrictions that the Takings Clause or Contracts Clause places on actions taken *by the state*. That language is irrelevant where, as here, a private party has initiated and undertaken the challenged conduct. Petitioners' claim of a "direct conflict" between *Phillips Petroleum* and the decision below is therefore baseless.

For similar reasons, Petitioners' assertion that the decision below conflicts with this Court's decision in *Brown v. Legal Foundation of Washington*, 123 S. Ct. 1406 (2003), is completely meritless. In *Brown*, the Court rejected a challenge to a Washington state-court rule, which required certain escrowed funds to be held in an account subject to the state's "interest on lawyers' trust accounts" ("IOLTA") program if the funds could not generate net interest for the client's benefit. The interest on the IOLTA account was paid to a foundation for public purposes. *See* 123 S. Ct. at 1421. The Court "*assume[d]* that . . . [petitioners'] interest was taken for a public use" under this procedure. *Id.* at 1419 (emphasis added). The Court concluded, however, that the petitioners lost nothing of value, because the IOLTA rules applied only

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[3] For similar reasons, Petitioners' reliance on *Coombes v. Getz*, 285 U.S. 434 (1932) and *Looker v. Maynard*, 179 U.S. 46 (1900), is misplaced. Like *Phillips Petroleum*, neither of those cases arose under 42 U.S.C. § 1983, and neither of them addressed the issue of state action.

when the funds could not generate net interest for their owner. *Id.* at 1419-20. The Court held, therefore, that the amount of "just compensation" was zero. *Id.*

Petitioners' reliance on the assumption in *Brown* that a taking had occurred has no bearing on the issues in this case, because the mandatory IOLTA requirement in *Brown*—unlike MetLife's decision to demutualize—clearly involved state action. In *Brown*, the State of Washington *required* all lawyers and limited practice officers ("LPOs") to place escrowed funds in IOLTA accounts whenever they determined that the funds could not generate net interest for the client. Here, by contrast, the state has not required any company to demutualize. As described above, MetLife's Plan was initiated by its management, adopted by its board of directors and approved by a policyholder vote, and MetLife was entirely free not to pursue a reorganization under the demutualization statute if it so chose.[4]

As *Brown* itself makes clear, action that would violate the Takings Clause if undertaken by the state raises no constitutional concern if it is undertaken by a private party. Indeed, the petitioners in *Brown* argued that the IOLTA rule might cause lawyers or LPOs to deposit funds in IOLTA accounts mistakenly, even if the funds could generate net income. *Id.* at 1420. The Court, however, rejected the notion that this amounted to a Takings Clause violation, holding that the likelihood of erroneous

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[4] For the same reason, the remaining Takings Clause cases cited by the Petitioners (Pet. 13-16), which presuppose coercion by the state, are inapposite.

deposits by private actors did not undermine the validity of the IOLTA process created by the state. *Id.* at 1421. The Court observed:

> The [Washington State IOLTA] Rules . . . unambiguously require lawyers and LPOs to deposit client funds in non-IOLTA accounts whenever those funds could generate net earnings for the client. . . . Thus, if the LPOs who deposited petitioners' money in IOLTA accounts could have generated net income, the LPOs violated the court's Rules. Any conceivable net loss to petitioners was the consequence of the LPOs' *incorrect private decisions rather than any state action.*

Id. (emphasis added).

Here, too, any claim by the Petitioners that compensation distributed by MetLife under the Plan was inadequate was not the result of any action by the state. The Plan was a privately initiated and implemented decision. Moreover, under New York law, the amount and allocation of consideration among policyholders is left to the discretion of the company adopting a plan of reorganization, subject only to the requirement that it be "fair and equitable to policyholders." N.Y. Ins. Law § 7312(c)(3), (d)(4)(A)-(B), (e)(1), (j). Accordingly, as with the mistaken IOLTA deposits addressed in *Brown*, any conceivable harm to policyholders from an allegedly unfair demutualization would be the result of the demutualizing company's putatively "incorrect private decisions, rather than any state action." *Brown*, 123 S. Ct. at 1421. For this reason, Petitioners have no viable constitutional claim.

III.
Policyholders' Interests Are Fully Protected by State Law.

Finally, Petitioners' assertion that the decision below "affect[s] significant and valuable property rights," Pet. 16, is incorrect. Even putting aside the widely recognized fact that membership interests in a mutual organization lack tangible economic value in the absence of a demutualization,[5] state law governing demutualizations amply protects any interests that policyholders may have.

Any policyholder who believed that the Plan failed to provide fair and equitable consideration in exchange for policyholders' membership interests, or otherwise failed to meet the applicable legal requirements, had an opportunity to object to the Plan orally or in writing at a public hearing before the Superintendent. N.Y. Ins. Law § 7312(i); *see* App. 79-80, ¶¶ 25-26, 28. In addition, any policyholder who believed the Plan was improperly approved could seek judicial review in state court. *See* N.Y. Ins. Law § 326(a) ("any order . . . or decision of the superintendent is . . . subject to judicial review in a pro-

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[5] *See, e.g., Paulsen v. Commissioner*, 469 U.S. 131, 138-40 (1985) (value of membership interests in mutual savings bank was "practically, zero"); *Society for Savings v. Bowers*, 349 U.S. 143, 150 (1955) (same); App. 21-22 & n.22 (District Court opinion, citing cases holding that mutual company membership interests, whether in insurance company or savings bank, are "too insubstantial" to constitute property). As the District Court recognized, Petitioners' contractual rights in their insurance contracts are expressly preserved by the Plan and are unimpaired as a matter of New York law. App. 20-21 & nn. 18-19; App. 25-26 & n.34.

ceeding under article seventy-eight of the civil practice law and rules"); *Shah v. Metropolitan Life Ins. Co.*, 2003 N.Y. Slip Op. 50591(U), at *21-23, 26, 30, 34, 37, 40, 2003 WL 728869 (Sup. Ct. N.Y. County Feb. 21, 2003) (recognizing availability of such state judicial review proceeding to challenge Superintendent's approval of Plan).[6]

Petitioners' suggestion that policyholders were somehow denied justice is therefore completely unfounded. The matters of corporate organization that Petitioners challenge are entrusted to the business judgment of the company's board of directors and to the judgment of the voting policyholders, subject to regulation by the state for policyholders' protection. No issues of federal law warranting this Court's attention are implicated.

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[6] Moreover, if Petitioners were correct that the demutualization was a taking of their property by the state, they could have brought an inverse condemnation action against the state in the New York Court of Claims. *See* N.Y. Court of Claims Act § 9(2) (authorizing suit against state for compensation for "appropriation of real or personal property or any interest therein"). Having chosen to forgo this speedy and adequate state remedy, Petitioners cannot complain that the state violated their constitutional rights. *See Williamson Regional Planning Comm'n v. Hamilton Bank*, 473 U.S. 172, 194-97 (1985) (existence of adequate state remedy to obtain compensation defeats claim of denial of just compensation under Takings Clause).

CONCLUSION

For all of the foregoing reasons, Respondents respectfully request that the Court deny the Petition.

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In The

Supreme Court of the United States

STEPHEN TANCREDI and RONALD SPEIDEL,

Petitioners,

v.

METROPOLITAN LIFE INSURANCE CO.,
and
METLIFE, INC.,

Respondents.

On Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Second Circuit

REPLY BRIEF IN SUPPORT OF THE PETITION FOR A WRIT OF CERTIORARI

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INTRODUCTION

The Brief of Respondents ("MetLife") serves to further demonstrate the importance of the question presented. The Petition argues that this Court's specific "reserve power" decision in *Phillips Petroleum v. Jenkins,* 297 U.S. 629, 634 (1936) and the specific *per se* Takings Clause analysis of *Brown v. Legal Foundation of Washington,* 123 S.Ct. 1406 (2003) apply to determine whether a mutual insurer acts as a "state actor" under 42 U.S.C. § 1983 in violation of the Takings and Contracts Clauses in a statutory demutualization.

MetLife argues that the Second Circuit correctly applied general, non-Takings Clause state action precedent derived from *American Manufacturers v. Sullivan*, 526 U.S. 40 (1999); *Blum v. Yaretsky*, 457 U.S. 992 (1982) and *Rendell-Baker v. Kohn*, 457 U.S. 830 (1982), and that *Phillips* and *Brown* are irrelevant. The Fifth and Seventh Circuits held the same in cases in which Petitions For Certiorari are now pending before this Court. *Gayman v. Principal Financial Services, Inc.*, No. 02-1551 and *Campbell v. John Hancock*, No. 02-1681. The decisions of the Second, Fifth and Seventh Circuits appear to conflict with the Sixth Circuit's decision in *Ohio State Life Insurance Co. v. Clark*, 274 F.2d 771 (6th Cir. 1960), as well as this Court's decisions in *Phillips Petroleum* and *Brown*.

Because of the present conflict and the widespread importance of the question presented affecting the property rights of millions of mutual policyholders, it is respectfully submitted that this Court grant Certiorari.

I. The Brief In Opposition Demonstrates A Substantial Conflict As To Whether The State Action Question Is Subject To Specific Takings And Contracts Clause Precedent Applicable To Corporate Reorganizations Or More General Fourteenth Amendment Due Process State Action Precedent

As this Court has observed, " . . . if a precedent of this Court has direct application in a case, yet appears to rest on reasons rejected in some other line of decisions, the lower courts should follow the case which directly controls, leaving to this Court the prerogative of overruling its decisions." *Rodriquez de Ouijas v. Shearson/American Express*, 490 U.S. 477, 484 (1989).

MetLife argues that the Second Circuit correctly found no state action because the state did not mandate or coerce the decision to demutualize. *Cf.* App. A, p. 8; MetLife Br. at pp. 4-6. This Court's *specific* Takings Clause precedent demonstrates, instead, that state action is present where a permanent physical occupation of another's property is "authorized" or "merely permitted" by the government after request by the person seeking to take the property. *Loretto v. Teleprompter Manhattan CATV Corp.*, 458 U.S. 419, 426 (1982). In *Loretto*, the state neither mandated nor coerced the cable company to occupy the property owners' rooftops. Instead, the cable company freely elected to occupy that property based upon the power and procedures in the state enabling act. *Id.* at 424. That the cable company in *Loretto* conducted itself as a "state actor" was unquestionable.

Under specific *per se* Takings case precedent, unlike the Fourteenth Amendment due process cases cited by MetLife and the Second Circuit (MetLife Br. at pp. 5-6),

the question is not whether the State "mandates" an actor to deprive another of property without notice or opportunity to be heard, *but rather whether the State has "enabled" the actor to cause an involuntary transfer of private property to another*. What was "mandated" or "coerced" in *Loretto* was the apartment owners' "forced acquiescence" to the occupation by the cable company. *See Yee v. City Of Escondido*, 503 U.S. 519 (1992). Here, what was "coerced" was the policyholders' forced relinquishment of their contractual rights. The fact that the decision to demutualize was voluntary is irrelevant, just as it is irrelevant that the cable company in *Loretto* voluntarily chose to utilize state created powers to take rooftop space. Because MetLife allegedly used the state conversion law to "force" policyholders to give up their contractual interests, MetLife exercised "state action" within the meaning of the Takings and Contracts Clauses.

It is respectfully submitted that whether MetLife exercised "state action" and engaged in a *per se* Taking of property are important federal constitutional questions upon which this Court should grant Certiorari.

II. Respondents' "Prudential Ripeness" Defense Was Properly Overruled By The District Court

Petitioners are not required to exhaust all other potential state remedies, as MetLife now contends, in order to obtain damages under the Takings Clause. The lower courts properly overruled this defense and addressed the merits. App. B, p. 10; C, p. 15. MetLife erroneously reads *Williamson County v. Hamilton Bank of Johnson City*, 473 U.S. 172 (1985) to require a Takings claimant to exhaust all state remedies. MetLife Br. at pp.

14-15. The lower courts properly recognized that *Williamson* provided for a "prudential ripeness" rule of finality and was automatically satisfied here by the Superintendent's decision which authorizes the Taking and set the amount of or method for determining the compensation to be made pursuant to the procedure in the Conversion Law. App. 67-169. *See also Suitum v. Tahoe Regional Planning*, 520 U.S. 725, 734 (1997).

Under this rule of finality, once a state has determined to authorize a Taking *and* the designated state official has determined the amount of compensation, if any, that will be paid, a Takings Clause claim is ripe. In this sense, in a *per se* or "physical occupation" Takings case, ripeness exists as a matter of law when the property is transferred by government authority and the amount of compensation, if any, has been determined. *Washlefske v. Winston*, 234 F.3d 179, 183 (4th Cir. 2000). The Fourth Circuit in *Washlefske* explained that *Williamson* requires a determination as to whether a final decision by the state has been made authorizing a Taking *and* deciding the value of compensation, if any, to be paid:

> In this case, the finality of the State's position has not been questioned; the statute's language is clear and its impact upon Washlefske is uncontroverted . . . Not only is the State's use of the interest uncontroverted, but also its amount is readily calculable, more than satisfying the Supreme Court's prudential ripeness requirements.

Id. at 182-83. *See also Montgomery v. Carter County, Tennessee*, 226 F.3d 758, 765 (6th Cir. 2000) ("In holding that the tract owner's claim was not ripe, the Supreme Court took pains to distinguish the concept of finality from the somewhat related but distinct concept of exhaustion of

state remedies"). By the Superintendent's order, the State made a final decision allowing Petitioners to then pursue their Takings Clause compensation remedy.

Other circuit courts hold that *Williamson* provides a "rule of exhaustion." *Deniz v. Municipality of Guaynabo,* 285 F.3d 142, 146 (1st Cir. 2001) and *Daniels v. Area Plan Commission Of Allen County,* 306 F.3d 445, 453 (7th Cir. 2002). The question whether *Williamson* provides for a rule of finality or a rule of exhaustion is presented in the related Petition For Certiorari in *Campbell v. John Hancock*, No. 02-1681, filed on May 16, 2003.

The "exhaustion of all state remedies" rule advocated by Respondents, however, is contrary to *Williamson* and the Takings Clause itself. The Takings Clause guarantees a *compensation* remedy for a Taking; therefore, any state law remedy would merely be supplementary. *First English Evangelical Church of Glendale v. County of Los Angeles, California*, 482 U.S. 304, 314-15 (1987); *Jacobs v. United States*, 290 U.S. 13, 27 (1933). MetLife's suggestion that N.Y. Court of Claims Act § 9(2) provides this procedure is wrong since that statute, unlike § 1983, does not provide a procedure for Petitioners to recover their damages from MetLife, it only allows relief from the state. Other judicial remedies available against MetLife need not now be pursued since they are supplementary. As the Fourth Circuit in *Washlefske* succinctly recognized, supplementary state remedies cannot subvert the remedy specifically guaranteed by the Takings Clause in stating:

> If we were, in this circumstance, to require Washlefske to file his claim first in a Virginia court, we would be transforming *Williamson County*'s finality rule into a rule of exhaustion. This result would be in diametric opposition to a

> foundational decision of modern § 1983 jurisprudence, *Monroe v. Pape*, which held that "the federal remedy is supplementary to the State remedy, and the latter need not be first sought and refused before the federal one is invoked." 365 U.S. 167, 183 (1961).

234 F.3d at 183. This Court in *Williamson* explicitly ruled that "exhaustion of *review procedures*" was not required, citing *Patsy v. Florida Board of Regents*, 457 U.S. 496 (1982). *Id.* at 195, n.13. Here, exhaustion of review procedures, in any event, is conditioned upon the plaintiff posting security for MetLife's attorneys' fees, a condition most policyholders could not afford. App. 61. The remedy under the Takings Clause is unconditional.

Here, the Takings claim is ripe because the State authorized a Taking of property and value to be paid pursuant to the Conversion Law procedure.

CONCLUSION

Wherefore, it is respectfully requested that this Honorable Court accept Certiorari here and in the related cases of *Gayman v. Principal Financial Services, Inc.*, No. 02-1551 and *Campbell v. John Hancock*, No. 02-1681, in which Petitions for Writ of Certiorari are pending, to address these important constitutional questions.

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